STATE INSURANCE

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A SOCIAL AND INDUSTRIAL NEED

BY

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BOSTON AND NEW YORK
HOUGHTON MIFFLIN COMPANY
The Riverside Press Cambridge
1909

Published March 1909

WITH FRATERNAL INTEREST THIS BOOK IS
RESPECTFULLY DEDICATED TO
THE WAGE-EARNER

"*It happens, as though through some inadvertence, that in making a contract of the greatest possible moment, both parties seem to ignore absolutely certain very important elements. The contract is made as though sickness, accidents, invalidity and old age had been permanently banished from the earth. The daily wage is sufficient only for daily necessities; a man entitled to support for a lifetime unwittingly consents to a wage based upon a portion of that lifetime; for the competition in the field of labor is among the strong, the able-bodied, the efficient; the sick, the maimed, the superannuated are necessarily excluded*" (p. 7).

PREFACE

THIS volume finds its justification in the keen interest which, from various causes, has been aroused in the subject of personal insurance.

If it shall tend to stimulate interest and discussion concerning a question of so profound and urgent importance its main purpose will have been accomplished.

The author is under obligation to Dr. George Zacher, of the Imperial Insurance Office, Berlin, for permission to use the tables shown in Appendix E. While the data given are brought down only to the year 1904, they constitute the most convenient conspectus which has yet appeared.

BOSTON, November, 1908.

CONTENTS

STATE INSURANCE

I

THE PROBLEM

It is the purpose of this volume to point out what seem to be certain faults in present social and industrial conditions, and to suggest how these faults might be corrected in some measure by a system of compulsory state insurance. It is believed that the policy indicated might result in mitigating poverty, in allaying social unrest, and in contributing to a higher degree of industrial peace.

During the past century great labor-saving inventions, the application of steam and electricity to machinery, resulting in the so-called factory system, have completely transformed the industrial world. Laws, customs, and methods adapted to the old order of things have frequently proved entirely unsuited to the new. But the immense progress made in the arts and sciences has found no counterpart in the laws and customs which that progress demanded. We often discard the machine that is five or ten years old for something

better, but we are content to live under laws and practices which have remained almost unchanged for three hundred years and which have little to commend them except their antiquity. In the world of mechanics, of manufactures, of physical science, and of commerce, the inventive mind is constantly on the alert to discover better, simpler, more economical or more effective methods, while the legislator boasts of treading *in antiquas vias*, as if it were a virtue and as if there were no unexplored regions in the field of social or political science, no discoveries to be made, no reforms to be achieved.

There is a principle underlying this discussion which is briefly comprehended in the maxim that every man is entitled to a living, or, stated in other words, that he is entitled to a living wage for his labor. This right has been called a natural, a political, an ethical right. For our purposes it is immaterial what name is given to it; it is sufficient that we recognize it universally, not only in theory but in practice. If a man's life is sacred, if he is not to be stricken down by the assassin, so his right to a living shall be guarded — he shall not be allowed to starve. The right to life and the right to a living are not to be distinguished. "He that taketh away his neighbor's living slayeth him; and he that defraudeth the

laborer of his hire is a bloodshedder." [1] This may be applicable not merely to an individual, but to a condition of society or to a defective industrial system. This right has been asserted frequently and emphatically by the highest authorities. According to Cardinal Manning, it is a doctrine of the Catholic Church that the right of man to subsistence is prior to the rights of property. Leo XIII declared that it was "a dictate of nature more imperious and ancient than any bargain between man and man that remuneration must be enough to support the wage-earner in reasonable and frugal comfort," [2] and Montesquieu maintained that the state owes to all of its citizens an assured subsistence and a mode of life consistent with health.[3] To Carlyle it seemed a platitude of a world in which all working horses could be well fed and innumerable working men should die starved.[4] Malthus, on the other hand, foresaw for the near future the superfluous man for whom no cover should be laid at nature's mighty feast, whom she should tell to begone.

If all comers, whether by immigration or by

[1] Ecclesiasticus, xxxiv, 12.

[2] *Rerum Novarum.* Allocutiones, vol. iv, p. 200. Official translation.

[3] *Esprit de Lois*, liv. 23, ch. 29. "L'Etat, qui doit à tous les citoyens une subsistance assurée, la nourriture, un vêtement convenable, et un genre de vie qui ne soit point contraire à la santé."

[4] *Past and Present.*

birth, are not to be welcomed by the state, the only remedy is by efficient restriction; the individual should be denied the right to come as an immigrant, even the right to be born. But theories and abstractions aside, every civilized nation acts upon the principle stated; it does not propose that any person within its limits shall perish for lack of food, clothing, or shelter. Therefore, without analyzing its action, it decides in substance that the product of labor of a given generation must support all during that generation.[1]

But while the industries of a community ought to support the great body of workmen, it is true that specifically any given industry ought to support those workmen who devote themselves to it. This consideration is highly important, for while the natural wage-earning period of a man may be placed at about fifty years, there are industries so detrimental to health or so dangerous to life that they may exhaust the capacity for work in twenty years, or even less.

In considering the industrial life we must weigh the waste as well as the utilized, the productive portion. If the wage earned during life is insufficient to cover the waste, it is not a living wage. If a given industry does not pay the necessary living wage, it is not a self-sup-

[1] F. A. Walker, *The Wages Question*, p. 34.

porting industry; it is, in some measure, parasitic.

The elements of cost and waste have been studied with somewhat definite results. There is the rearing of children to the age of self-support, with the fact that about thirteen per cent die during that period; the loss from the death of wage-earners during the fifty years of the assumed productive life, estimated at a loss of twenty-five per cent in the United States;[1] six per cent lost through illness, nearly an average of nine hundred days in fifty years;[2] the cost, in money and time, of accidents; the support of the aged, — all inescapable elements.

If all employers were a unit, and if this unit were intelligent and sagacious, however merciless it might be; if it were confronted with the problem of procuring labor merely upon hard business principles, keeping in mind both cost and efficiency, seeking the lowest cost consistent with high efficiency, it would consider how much it would cost to rear the human being or the class of human beings best fitted for its purpose; how long a period of infancy must precede his capacity to work and what loss from death would occur during that period; how long the natural term of labor may

[1] F. A. Walker, *Wages*, p. 35.

[2] C. S. Loch, *Insurance and Savings*, p. 50.

be and how much diminished by premature death; what allowance must be made for incapacity resulting from accidents, from sickness, from invalidity of any sort; how long a period of dependence there would be after working days were over. It would find that, for the best results, this working man and his family must be well clothed, well housed, well fed, and that he must live and work under proper hygienic conditions; that he must have hospital, medical and surgical attention in illness and after accidents; it would even find that, to a certain extent, he must be educated and have mental and moral training. Having determined this cost, it would pay that and nothing more. In other words, it would act as intelligently, not to say humanely, in rearing a workman destined for efficient labor as it now does in rearing a beast of burden.

On the other hand, labor, acting with similar intelligence and singleness of purpose, and making similar allowances for waste, could demand nothing less than the cost of living for the whole period of life and covering all its vicissitudes, and would of course make the scale of living as high as possible. It might have in addition certain theories as to its right to a certain proportion of the produce of labor and be very keen as to any injustice in the distribution of profits.

But practically it happens, as though through some inadvertence, that in making a contract of the greatest possible moment, both parties seem to ignore absolutely certain very important elements; the contract is made as though sickness, accidents, invalidity, and old age had been permanently banished from the earth. The daily wage is sufficient only for daily necessities; a man entitled to support for a lifetime unwittingly consents to a wage based upon a portion of that lifetime; for the competition in the field of labor is among the strong, the able-bodied, the efficient; the sick, the maimed, the superannuated are necessarily excluded.

The disparity between the wage paid during the period of earning capacity and a wage sufficient for the workman's support throughout his life is most striking in dangerous and unhealthy employments. If the industry, paying what is a living wage for the moment merely, exhausts its victim in twenty years or less, as is frequently the case, it has drunk the wine of the wage-earner's life and left to him, or to society, the dregs. It has often wastefully used up this human material and thrown the wreck aside as remorselessly as though it were inanimate machinery. The injustice of this state of things is frequently emphasized by the fact that those very industries have

yielded large profits to their promoters. It betrays a singular apathy on the part of the public that a usage so abhorrent to every instinct of justice, so shocking even from the standpoint of social expediency, should go on practically unchallenged for generations.

The subject has usually been discussed as though it concerned individuals or classes, the employer and the workman, to be governed by the maxim *laissez faire*, involving merely the question of supply and demand or matter of private contract, over which the state ought to have no control. This might be a safe policy if the parties to the labor contract met on equal terms; but we cannot ignore the fact that there is no industrial equality between them necessarily. In communities where population is congested or those where immigration is easy and unrestricted, — not to say promoted for the very purpose of keeping down wages and making the laboring classes more humble and subservient,[1] — the rate of wages is such as to bring the scale of living very near to what is vaguely termed the line of subsistence. Rather than a fixed relation between supply and demand, we frequently find what might be termed a constant demand and a supply varying at the will of those who fix wages; the workman brings his wares to an

[1] J. G. Brooks, *Social Unrest*, p. 20.

overstocked market and must take the attitude of a suppliant. The situation is often aggravated by the immobility of labor. While mobility is highly essential to the well-being of labor, through local attachment, through ignorance of other localities and labor conditions, through that degree of poverty which makes transportation impossible, through mere inertia resulting from the debasement of poverty, the laboring man does not migrate; he does not even pass from one stratum of labor to another in his own locality.[1] We do not need to claim universal application for the "iron law" of Lassalle or the theories of other economists upon this point; they seem to apply to some localities and some conditions. Whatever the cause or explanation, there are large classes of laborers in this country who do not receive a living wage according to the standard suggested, — a wage sufficient for support for the entire life.

Investigations have frequently been made to determine the basis of wages, judged by their sufficiency for the maintenance of health, vigor, and physical efficiency. No lower standard could be justified under any circumstances, although, as a matter of fact, a lower standard does obtain often over wide areas and for long periods of time.

[1] F. A. Walker, *Wages*, ch. xi.

We are apt to think of the laboring classes in this country as well fed, well clothed, and well housed, and not proper objects of solicitude. We are incredulous when told that Germany's poorer classes, though less favored by circumstances, maintain a higher level of well-being and a far higher level of vitality than those of either the United States or England;[1] or that we know less about the poverty of our people than almost any other nation of the Western world;[2] or that Americans work themselves out at an earlier age and are more subject to fluctuations of employment than European workmen, and industrial accidents are much more frequent.[3]

As a basis of comparison, we might take $600 per annum as a minimum wage, based upon a family of five or six, in industries outside of agriculture. Upon a figure somewhere near this, there has been, in a very general way, some unanimity of opinion among expert observers.[4] While the minimum wage permissible varies much with local and other conditions, it is obvious that under given circumstances it must be quite inelastic in the sense that it cannot be materially diminished

[1] A. Shadwell, *Industrial Efficiency*, ii, 453.

[2] Robert Hunter, *Poverty*, p. 12.

[3] T. S. Adams and H. L. Sumner, *Labor Problems*, p. 159.

[4] J. A. Ryan, *A Living Wage*, p. 150; E. T. Devine, *Principles of Relief*, p. 35; Hunter, *op. cit.* p. 51, and authorities there cited.

without consequent suffering. It is instructive to compare this minimum wage with actual wages. In Massachusetts during a period of great industrial prosperity, — with the necessary attendant cost of living, — out of over 300,000 adult workmen only about two fifths received as much as twelve dollars per week; this, with proper allowance for a considerable percentage of unemployment, would make considerably less than $600 per year.[1] But this would be exceptional as to time and locality. It has been said that the 18,000,000 wage-earners of the United States receive an average wage of only $400 per annum;[2] that the mass of unskilled workmen in the Northern States receive less than $460 and in the Southern States less than $300; that even this lower figure may be reduced by unemployment to $225 to $250 per year;[3] and this for large classes of workmen and for considerable periods of time.

These figures would seem to show the gross inadequacy of wages even if the vicissitudes of life are entirely disregarded, — as they are and must be by the great majority of laborers,

[1] Compare *Mass. Labor Bulletin, No. 44*, December, 1906, p. 430, with *Thirty-seventh An. Report*, 1906, Mass. Bureau of Statistics of Labor, pp. 279–281.

[2] *Address before American Association for Advancement of Science*, December 27, 1906, by Henry Laurens Call.

[3] Hunter, *op. cit.* pp. 53–56; Adams and Sumner, *op. cit.* pp. 160–166.

— and to demonstrate the futility of all attempts at saving even with the highest degree of thrift. There are myriads of wage-earners whom only the narrowest margin separates from bitter want. It has been said that in Europe in most cases a serious accident to a workman means an immediate demand for charitable assistance;[1] and that in some localities in England a snowfall is a serious calamity, as no provision has been made for the resulting day of idleness.[2] There could undoubtedly be found in many a manufacturing town, both in England and America, families who have not once caught a glimpse of prosperity in four generations, nor once been separated from actual want by an interval of thirty days. "For commonplace and average abilities, in mill and factory, the cheering promise of getting free from an 'existence wage' scarcely exists."[3]

For such workmen poverty is not mere destitution; there goes with it apprehension as to the future — apprehension lest work shall cease; lest sickness or accident may befall for which surgical or medical aid shall be lacking; lest death may come leaving wife and children destitute. For such there are days of unremitting toil and nights of physical weariness in-

[1] W. F. Willoughby, *Workingmen's Insurance*, p. 11.
[2] Blackley, *Thrift and Independence*, p. 11.
[3] J. G. Brooks, *Social Unrest*, p. 92.

vaded by ceaseless anxiety. There goes with poverty, too, the consciousness of the loss of dignity and manhood; the knowledge that there is left no capacity to make the contract for labor except on unequal terms. They must accept whatever conditions may be imposed, if not in a spirit of resignation, with the mute passiveness of the beast of burden, transformed not by the siren of hope but by despair.

There is a feeling, too general, that poverty and pauperism are the results mainly of intemperance and improvidence, and we sometimes think that we see in them a sort of retributive justice. Statistics both in England and America would seem to indicate that only a small part of existing pauperism is traceable to intemperance, — only about one seventh, — while about three quarters — seventy-two per cent — is attributable to misfortune.[1] As to improvidence, it is undoubtedly, to some extent, both the cause and consequence of poverty, but obviously there must be somewhere in the scale of poverty and of earnings a condition where saving or provision for the future is impossible; the present need may be so constant and so imperative as to preclude all thought of the future. Budgets have some-

[1] Charles Booth, in *London Statistical Society*, liv, 610; A. G. Warner, *American Charities*, p. 46, and Table VIII.

times been published showing the expenditures of laboring men.[1] Even when they concern the wages of the comparatively well-to-do wage-earners, they furnish eloquent and pathetic refutation of the theory that thrift would cure all of the ills of workmen.

The figures and estimates referred to tend to show the inadequacy of wages, tested by the period of health and capacity; but it would be sufficient for the purposes of this discussion to show that the lifetime wage is not adequate for the whole life, or even, whatever the view of the sufficiency of the wage, that out of it no provision can be made for the future if individual effort is the sole reliance. It would seem reasonable to expect certain indirect consequences of a defective wage system, or inadequate wages long continued, in a lack of thrift resulting from a sense of helplessness, gradual loss of efficiency, diminished self-respect, lower standards of responsibility to society, in a word, deterioration in manhood.

Without going into the matter in detail, it is material to note the extent of poverty among workmen in its various forms. It is not possible to give definite figures, nor is it necessary for our purpose; but the investigations of

[1] Mass. Bureau of Labor Statistics, *Sixth An. Report*, 1875, pp. 221–354; B. S. Rountree, *Poverty, a Study of Town Life* (York, Eng.), ch. viii; Mrs. L. B. More, *Wage-Earners' Budgets* (New York City); U. S. Depart. of Labor, *18th Report*, 1903, pp. 264–285.

many competent observers do not lead to radically different conclusions. It is said that more than one half of the families of the country, and nine tenths of those in the cities and industrial communities, are propertyless; that in a group of States including Massachusetts one fifth are in poverty; [1] that one twentieth are paupers; [2] that one eighth of the families hold seven eighths and one per cent over one half of the property of the country; [3] and that seventy-one per cent of the people hold but five per cent of the wealth; [4] that one eighth of the families receive over one half of the total income, and that two fifths of the better-paid laborers receive more than the remaining three fifths.[5] These figures seem especially important when we are assured on high authority that "the tendency of purely economic forces is to widen the differences existing in industrial society,"[6] and that, "unequal as is the distribution of wealth already, the tendency of industrial progress — on the supposition that the present separation between industrial classes is maintained — is toward a greater inequality still." [7]

[1] Hunter, *op. cit.* pp. 43, 60.
[2] R. T. Ely in *North American Review*, clii, 398.
[3] C. B. Spahr, *Present Distribution of Wealth in the U. S.* p. 69.
[4] G. K. Holmes in *Political Science Quarterly*, viii, 593; R. T. Ely, *Society and Social Relief*, pp. 272–275.
[5] Spahr, *op. cit.* pp. 128, 129. [6] Walker, *op. cit.* p. 166.
[7] J. E. Cairnes, *Political Economy* (Harper, 1874), p. 285.

Too frequently the dazzling splendor of great wealth blinds our eyes to the real significance of the signs of the times, and we think we see evidences of great national prosperity in those very phenomena which really indicate social injustice — a condition where the man who toils is invited to bask in the reflected warmth and light of another's prosperity. We are easily misled, too, by figures which are offered to demonstrate especially the well-being of the laboring classes, as those showing savings-bank deposits. In Massachusetts there would seem to be an average deposit of about $300. Even this amount would constitute a very meagre provision for the vicissitudes of the future. But investigations have shown that, while far the largest number of depositors belonged to the wage-earning class, they had relatively a small share of the deposits; that the deposits of thirteen fourteenths of the whole number were but slightly larger than those of the remaining fourteenth; that in a typical bank the average deposits of wage-earners was less than $75.[1] It does not go far towards indicating the prosperity of the laboring classes to show that the more thrifty or the more fortunate of them have accumulated a fund which thirty days of illness or en-

[1] Mass. Bureau of Labor Statistics, *Third Annual Report*, pp. 304, 313, 318, and 325; also *Fourth Annual Report*, p. 192.

forced idleness might consume. As a matter of fact, deposits in savings banks seem to be made up, first, of the investments of well-to-do people, making a very large part of the aggregate; certain funds in transit, awaiting other investment or accumulating for a specific purpose; and, to a relatively small extent, of the slow savings of those wage-earners who are more thrifty, more fortunate, less burdened, or better paid than their fellows.

But the matter cannot be treated merely from the standpoint of the individual. Whether one of its members shall become dependent or not deeply concerns society; pauperism and the various degrees of poverty affect the body politic. Even if we look upon them as forms of retribution for improvidence, intemperance, and vice, we cannot forget that the victim does not bear his burden alone. The state must provide the reserve which is lacking. Moreover, pauperism is something more than a burden imposed; it is social disease, radical, contagious, and hereditary. Its ranks are continually supplied from above, and every accession suggests a possible horde of Ishmaels or Jukes. There are the propertyless, living in some degree of comfort, but barely making each month's earnings supply the month's necessities; the victims of poverty, who constantly feel the bitterness and sting of want;

the paupers clinging like parasites to society. The transition downward is easy; the propertyless are on the verge of poverty and those in poverty on the verge of pauperism. The situation is so precarious that a slight misfortune — enforced idleness, a serious accident, illness or the death of the wage-earner — may start the unwilling victim on the downward course. But from the lowest stage, pauperism, there seems to be no return. The pauper is the victim of poverty who surrenders, and when he surrenders the capitulation is abject, absolute, and unconditional; having acquired the hated badge, he is content to wear it for life and to bequeath it to his children. The disease of pauperism has been aggravated through mischievous theories and practices, often by the very remedies which were prescribed for its cure. The gamut of experiments in dealing with the evil has been run. The pauper has at one time been the peculiar object of Christian solicitude, and those able to contribute to his relief have been threatened with the displeasure of the Church for refusing; at another stage he has been branded, delivered over to slavery, even put to death, under English law. For three hundred years, since the Poor-Law of Elizabeth, English-speaking people have adhered to methods which were admitted to be unscientific and

inefficient. The opinion was expressed after a trial of two hundred years that, if the poor-laws had never existed in Great Britain, the aggregate of happiness among the common people would have been much greater, and that they had very decidedly lowered the wages of the laboring classes and made their condition essentially worse.[1] And as to the conditions which tend toward pauperism it has been said that "the extremes of wealth and poverty were less widely separated six centuries ago. . . . The grinding, hopeless poverty under which existence may just be continued, but when nothing is won beyond bare existence, did not, I am convinced, characterize or even belong to mediæval life." [2] But however well satisfied we may be with the management of the problem of pauperism, the burden has been very great at all times. In mediæval times one third of the tithes was deemed necessary for the support of the poor. During eras of great industrial depression in England the fear has arisen that the expense might consume all of the revenues of the kingdom. Even to-day the burden in England and America is a heavy one and perhaps not materially diminishing. At least the cost would seem to be increasing. The cost in Great

[1] Malthus (Murray, 1817), ii, 338, 369.

[2] J. E. T. Rogers, *Six Centuries of Work and Wages*, pp. 414, 415.

Britain in 1880 was about $40,000,000;[1] in 1897 it was $60,000,000;[2] and in 1905 it was $82,000,000.[3]

As definite figures cannot be given for the United States. Estimates have been made, based upon a population of 60,000,000.[4] With a population of 80,000,000 it would not seem extravagant to place the cost to-day at upwards of $100,000,000. But these figures represent only a fraction of the real direct cost of maintaining the poor and dependent. The multiform expenditures of private charity; the endowments of hospitals and homes for the poor, the infirm, the sick, the aged; funds dispensed through the agency of churches, salvation armies, and semi-benevolent societies; contributions made at street-corners of cities and in response to solicitations from door to door; the promiscuous giving everywhere without investigation, system, or record, — these probably constitute, in the aggregate, a larger item, perhaps many times larger, than that which is represented by poor-rates.

We are wont to look upon such facts and figures either with complacency or a sense of

[1] Lord Carnarvon, in *Nineteenth Century*, viii, 385.

[2] Mulhall, 1898.

[3] *Statesman's Year-Book*, 1907.

[4] F. B. Sanborn, quoted in Bliss, *Cyclopædia of Social Reform*, ed. of 1898, p. 981; R. T. Ely, *North American Review*, clii, 398.

helplessness; to conclude that they are largely the result of ever-recurring, inevitable, and remediless contentions between labor and capital, or that poverty and pauperism are hopelessly involved with the thriftlessness, improvidence, or vices of certain classes. We discern in the phenomena no defects in systems of jurisprudence, no need of a readjustment of industrial relations or of a revision of our conceptions of social obligation. We think we have performed our civic and Christian duty fully in the payment of poor-rates and our response to the calls of charity.

But we must reach one of two conclusions, — either that a large class of wage-earners receive a wage that is not sufficient to enable them to make provision for the future, or that they fail to make such provision through lack of thrift and foresight. In one case, they suffer grave injustice; in the other, they wrong society by wasting the reserve which should be accumulated and, in the time of need, rely upon the prudent and thrifty. In the former case, it may be claimed that society recompenses them through the various forms of relief; this would be equivalent to saying that restoration is made to them in the dole of charity of that which has been taken from them by a sort of institutional robbery. But even if the fault is entirely that of the wage-

earner, the problem of finding some system wiser, more practical, and more scientific than the present would remain; we ought to look for some disposition of the burden less odious to the recipient, less onerous to society, even if our efforts result in compelling the thriftless wage-earner to provide for a rainy day.

It is highly profitable to investigate and discuss industrial conditions from the standpoint of justice to the workman; to inquire whether he is receiving his rightful share of the product of the mill or factory, or whether he is forced by some economic law which he does not understand to leave behind him something that is his by right of creation.[1] But the concern of society as such is to be emphasized. To its care has fallen a large portion of poverty and pauperism with their measureless sequelæ. It has carried the burden without due appreciation of its nature or its weight, but with never-ceasing protest. It should consider whether it may not be alleviated, perhaps in the near future removed. "If such preventive organizations covered the whole field of industry, and if personal thrift were developed to the point at which laborers did their own saving instead of paying large sums to do their saving for them, the need for providing relief would

[1] J. B. Clark, *Distribution of Wealth*, p. 9.

almost disappear." [1] Society has here a problem of great importance. It must solve it with reference to all of its phases, social, economic, industrial, and ethical.

We live in a progressive age. The initiation of social experiments and the triumphs of social legislation are proclaimed to the whole world. If, through our apathy and inertia, we sin, we sin under the clearest light that has ever shone upon the paths of men. We may not assume, even plausibly, that our social and industrial problems are essentially different from those which to-day confront every civilized nation. These problems are virtually the same, whether under a democracy or under a monarchy. Everywhere poverty is squalid and debasing, and riches are sordid and debasing; everywhere the relations of capital and labor are similar, and there is a similar social disquietude over real or fancied grievances; everywhere there is the same gulf between luxury and penury, the same resentment towards the arrogance and pretensions of privilege and power.

Nor can we intelligently hope that, in some mysterious way, democracy will tend automatically to cure industrial evils or to solve industrial problems. Rather should we bear in mind that, from the industrial point of

[1] E. T. Devine, *Principles of Relief*, p. 334.

view, democracy has not yet been achieved. Men are frequently under the domination of industrial conditions which inexorably override statutes, constitutions, and bills of rights. Unless the workman can negotiate on equal terms for his labor, — the only commodity which he ever has to offer in the world's markets, — unless there is contractual equality, mere political equality may be a mockery and a delusion; his political rights may even be surrendered as a part of the consideration in the contract for labor. But through sane social legislation, based upon principles of equity and equality, we may gradually advance towards real democracy. When we once begin to see the reality we shall never again be satisfied with the phantasm.

II

THE FUNCTIONS OF A STATE

It is not proposed here to enter upon any general discussion of the nature, sphere, or end of the state, but to consider briefly some of the functions of a state as bearing upon our subject; to consider whether the experiences — not to say experiments — of civilized nations, including our own, may not furnish us with some light and guidance.

The boundaries of what may be termed social legislation cannot be deemed as definite or as having any degree of permanency. The laws and institutions of the state challenge frequent scrutiny. Changing conditions of industry or of society, more enlightened conceptions of government, may call for radical changes in the attitude of the state towards the individual, and laws in which there has been general and long-continued acquiescence may be found inadequate or even founded originally upon theories which no longer seem tenable.

The modern state, in its legislation, pursues its course somewhere between the extremes of individualism and socialism. The very conception of a state as organized society involves

the idea of law which shall restrain or compel, shall interfere with the freedom of the individual for ethical, economic, social, or other ends. No one would go to the extreme of individualism. We are all socialists, perhaps paternalists, although the term paternalism seems inapplicable in a democracy. The citizen says *l'état c'est moi;* he does not abdicate or surrender, he merely delegates. He does not call upon the state as a child upon a father, but rather as a master upon a servant; in his collective capacity, he commands it to do his will — to do that which it is inconvenient or impracticable for him to do in his individual capacity. The members of a community find that many desirable ends can be accomplished only through collective agencies. The individual cannot educate his child, provide suitable avenues of communication, protect himself against impositions and frauds in food and drugs which endanger health or life, stamp out disease or protect himself against its contagion, or care for orphans or the insane, for dependents of many kinds. These illustrations point to social legislation in which there is substantially universal acquiescence in this country. We look upon the assumption of these functions as inseparable from a well-regulated state. Yet the stern individualist needs to be reminded that almost every step in

this direction has met with the strenuous opposition of his class which has insisted that it was taken in violation of some sacred and infallible rule of action. But to conceive of a state divested of these and similar functions is to retrace our steps far back towards barbarism.

The state should move cautiously and tentatively in the direction of experiment; but, as the evolution of the modern state plainly shows, it must move. It must often subordinate the independence of the individual to the general good; it must work out many of its beneficent purposes by collective means; it must sometimes compel the individual to do that which he ought to be willing to do.

It would seem that adhesion to the existing order of things can be counted upon to prevent hasty and ill-considered legislation. In fact, there are no pages of history more heart-rending than those which tell the story of great industrial wrongs affecting myriads of men, women, and children in Great Britain and of the apathy and immobility of those, including statesmen, economists, and philanthropists, to whom the situation ought to have appealed irresistibly. To the cry of children robbed of childhood and of women robbed of womanhood her great statesmen solemnly replied, *laissez faire*. The facts elicited and

proclaimed by Peel and others as early as 1802 would have awakened the sympathy of savages. One would say that the ethical sense of the nation ought to have been stirred to thorough and instant action. Yet forty years afterwards, during which the subject had been kept constantly before the public mind through frequent parliamentary inquiries and through the efforts of a few individuals, — ostracized for their zeal and humanity, — it could be said conservatively that a state of things existed "which could scarcely be paralleled by any of the barbarous practices which contributed to make negro slavery so abhorrent." [1] But England, self-complacent, inert, mindful of the awful perils of paternalism, remained passive. Proposals to restrict the evils met with the most bitter class opposition; [2] those pecuniarily interested "were convinced that national prosperity and their own profits must rise and fall together"; [3] and the legislation suggested was denounced as an impertinence, as an unwarranted interference with the right of manufacturers to regulate their own affairs, as a menace to England's prosperity and her commercial supremacy. "It took twenty-five years of legislation to restrict

[1] Knight, *History of England*, viii, 395.
[2] Lecky, *History of England in the Eighteenth Century*, vi, 226.
[3] Hutchins and Harrison, *History of Factory Legislation*, p. 19.

a child of nine to sixty-nine hours per week." [1] And "it took seventy-five years to ascertain that the factory acts, instead of weakening, had strengthened her in the world's rivalry." [2]

As another illustration, public education in Great Britain encountered the strenuous opposition of every individualist. As late as 1870 she was pronounced behind every other nation of the world in this regard, centuries behind Prussia. "The idea prevailed that education conducted by the state would be something un-English; something which might do very well for Germans and Americans and other such people, but which was entirely unsuited to the manly independence of the true Briton." [3] These objections were not limited to the ignorant and thoughtless, but were advanced by England's most eminent statesmen and had the cordial sympathy of the Queen.

But we need not go so far for an instance, to which fuller allusion is made elsewhere, showing the painfully slow working of the public mind as evinced in legislation. About seventy years ago a doctrine was announced almost simultaneously by the courts of Eng-

[1] Hutchins and Harrison, *op. cit.* p. 21. The State of Illinois limits children of sixteen to eight hours per day.

[2] Traill, *Social England*, vi, 825; A. G. Warner, *American Charities*, p. 18.

[3] J. McCarthy, *History of Our Own Times*, iv, 289, 290; Lecky, *History of England in the Eighteenth Century*, vi, 276.

land and America concerning the right of workmen to recover damages from employers for a certain class of injuries suffered in the course of their employment. It was almost instantly recognized by thoughtful men that the doctrine would work flagrant injustice. The menace of these decisions was so grave that it would have been quite justifiable if every legislature where the doctrine was to become applicable had been instantly convened to counteract their effect by appropriate laws. The doctrine was so hopelessly wrong that it was said in the parliamentary discussions in England in 1893 and 1897 that there was hardly a reputable lawyer in England who would defend it; "not so much as a single employer rose in his place to give it a decent burial"; "there is no one so poor as to do it reverence." [1] During that long interval there have been almost daily illustrations in the industrial world of the great injustice of the law; there have been legislative and parliamentary committees and commissions without number, accumulating a mass of facts all tending in one direction; there have been opinions of economists, philanthropists, and statesmen of almost unanimous import; the doctrine has been abrogated wherever it had gained a foothold and is no longer in force in

[1] Asquith, Hansard (1897), xlviii, 752.

any civilized land outside of the United States. Yet we find here solemn and protracted hearings before legislative committees to consider the question as though it had not been authoritatively settled for all except the extreme laggards in the march of human progress.

These illustrations are adduced for the purpose of suggesting that there is far greater danger of a tardy recognition of the necessity for action on the part of the state than of its rashly assuming functions of a questionable nature. Looking retrospectively at many social reforms which have engaged public attention for decades and even generations, we should say they ought to have been accomplished in a single session of a legislature or parliament and without any opposition from intelligent men. Each generation, studying its predecessors, is amazed at the tardy apprehension of what seem to be the most obvious truths. In the economic, as well as in the physical world, facts which seem to lie within the scope of ordinary observation are concealed for centuries and when announced fall upon incredulous and hostile minds. A call for advanced social legislation often strikes the public ear like the voice of a Copernicus or a Galileo. To such an extent do old theories and prepossessions dominate all of our conceptions.

Meantime the world's progress along the lines of wider governmental activity would seem to discredit the stock objections of the extreme individualist. His predictions and apprehensions for the last two hundred years seem ridiculous in the light of experience. It is noteworthy that while there has been a constantly growing tendency to broaden the functions of the state, there is seldom a disposition to recede. The natural conservatism of men, the tenacity of conventional beliefs and traditions seem to give constant assurance that governments are not given to entering upon visionary projects.

One feature of the opposition to the legislation proposed is worthy of notice. The fear is expressed that it would prove to be paternalistic class legislation of a mischievous form. The apprehension seems to come largely from those who are already recipients of the benefits of paternalistic laws in their most odious form. "Our magnates of industry have not preached paternalism, but, in season and out of season, they have practiced it. They have practiced it so long and so openly, and with such conspicuous profit to themselves, that it is grotesque drollery for them to cry out against paternal legislation." [1]

After the Great Pestilence in England the

[1] J. G. Brooks, *Social Unrest*, p. 46.

Statute of Labourers was strenuously insisted upon because the demand for higher wages tended to "the damage of the great men,"[1] and to "the impoverishing of gentlemen." For centuries it remained, in some form, the law of the land, virtually reducing the laboring classes to abject servitude, although in distinct violation of a fundamental principle of political economy. It was demanded and retained by the same class who hysterically protested against the Factory Acts as an impertinent interference with the freedom of contract. Those who have fattened so long at the trough of privilege that they have come to believe that they have acquired vested rights as recipients of government favor obey a human, although not a noble, instinct in looking with jealousy and suspicion upon the approach of any who threaten to become new claimants.

That may well be termed an odious form of paternalistic legislation under which the strong are exalted at the expense of the weak; on the other hand, the state which protects the weak against the strong is fulfilling one of its most sacred and fundamental functions. Especially should a democracy, founded upon the theoretical assumption of equality, seek to make the theory an actuality. It was a maxim

[1] Statute, 1351.

of Frederick the Great that the first function of the state consists in holding the balance between the classes.

We may liken the state to a host with all its inhabitants as guests, invited to share the common bounty of nature, ample for all. It would obviously be indecorous for the host to show favor on the occasion, to prefer one guest or one class over another; but it may reasonably anticipate that some of these guests will be aggressively gluttonous or rapacious, disposed, and, by their superior physical strength or mental cunning, able, not only to devour their own portion but to seize and pocket the share of a neighbor, perhaps on some claim of superior prudence or special capacity to act as trustee for the despoiled. However abhorrent the idea of policing the feast may seem, especially to those who have predatory instincts and purposes, the host may decide that that is an essential feature of his hospitality and that it would be unseemly that some should go away with hunger satisfied and full pockets while others are hungry or starving.

Society, then, must have regard for its weaker members and the progressive Christian state must rest upon ethical foundations. To the individualist the very words ethical and social as applied to legislation seem

odious; but dogmatic theories as to law and government should be reëxamined wherever results constantly falsify and contradict the theory. All such theories must be tested with reference to industrial conditions as they arise. If existing laws and institutions tend to make the economically weak weaker and the strong stronger, or to increase the inequality between the weak and the strong, they are radically defective. If, as many profess to believe, in the industrial world of to-day the predatory instincts of men are fostered, and industrial robbery is not only made easy but widely practiced, the state must interfere. If such conditions exist, it is far more important that it should act effectively than that it should exhibit a blind reverence for traditions. There are as strong reasons, inherently, for legislating against any indirect robbery which is practiced as the result of economical disparity between the parties to a contract as for prohibiting highway robbery or larceny. Either class of laws may fairly be called socialistic or paternal. There would seem to be no good reason why it is not as much a proper function of the state, if it can do this effectively, to guarantee equality of opportunity, as to guarantee political equality.

The state may properly inquire into the causes of, and seek to allay, social unrest. It

may consider how far industrial conditions contribute to economic waste; whether some different mode of dealing with a social problem may not be better than an existing method; whether, for example, it is better to care for poverty and pauperism or to seek to prevent them, any solution of the problem being essentially socialistic. In dealing with questions that arise, it must have regard not merely for the superficially cheaper method, but must seek to find the one which is soundest on economic principles and most consistent with justice and right.

There is a feeling widely prevalent, though not often bluntly stated, that it is legitimate for the state to assume a paternal attitude toward certain worthy classes, to enable them in turn to take a similar attitude toward others. The practice of this theory has always wrought untold misery and wretchedness. It ignores the essential selfishness of men; the divine trusteeship degenerates into a gross betrayal of trust for which there is no remedy or punishment.

It will be suggested that legislation such as is proposed, looking to state insurance, tends to weaken the stand which the community should take against socialism. Quite naturally a demonstration of the mischievous results of individualism gives a broader and a

keener conception of social responsibility and leads towards social reforms; but there is a wide interval between rational social reforms through legislation and socialism. The discontent which arises from the working of unjust individualistic laws and institutions is undoubtedly allayed by removing just causes of complaint. A study of the experience of Germany for the past twenty-five years furnishes striking evidence of this fact. Those who would resist all attempts at reform in industrial conditions, lest they be deemed concessions in the nature of a surrender, would dam higher a rising stream to prevent its becoming uncontrollable, blindly contributing to the disaster which must ensue.

It will also be said that social legislation which is to be commended in a foreign government — in a monarchy — may be entirely unsuited to a democracy; that however successful their experiments in relieving industrial conditions, their example furnishes no light for us. It might well be retorted that a republic should be the first to attempt to realize one of the highest ideals of real democracy — the ideal of industrial equality. But the social and industrial problems which are to be solved by social legislation are the same under any form of government. "Social legislation is independent of the constitution

of states; it is indispensable in monarchies as well as republics." [1] The adoption of the Australian ballot was delayed two years in a certain Western State by the suggestion, on the part of a senator, that it was Asiatic! The experiences of monarchical governments under radical social legislation possibly point out a path that should be followed by us *a fortiori*. The management of mines, railroads, and manufacturing establishments calls for the same scrutiny everywhere; the questions arising between employer and workmen, between labor and capital, are not political but economic, industrial, social. The problems of poverty and pauperism, the treatment of accidents, sickness, and invalidity, as related to industry, all suggest certain social responsibilities calling for the state's intervention and for social legislation.

It must be remembered that the assumption of any function by the state, like that of compulsory public education, must be based upon different, perhaps higher, grounds than that of compassion for a class. The state does not give education to the poor and propertyless; it pays a portion of its obligation to them in that form, not only as a matter of justice to them, but for the common weal, even for its own salvation.

[1] Ludwig Lass, *German Workmen's Insurance*, pt. 1, p. 5.

The proposition that the state should take upon itself the new function of the insurance, in some form, of its citizens should be met rationally; we should be wise enough to study without prejudice the legislation of other governments and their experience under such legislation; our vision should be clear enough to recognize human progress wherever a demonstration has been plainly and conclusively made; we should distrust our own conclusions when we find ourselves attributing indisputable indications of an advance in the well-being of the laboring classes to the superior advantages and opportunities which a monarchy enjoys.

Traditions and conventions have their place and value; but they are too often the refuge of the indolent and the superficial; of those employing cant rather than argument; too often, fetishes, blindly worshiped.

It is unwise to attempt to set arbitrary limits to the functions of the state. Each proposition for enlarging its sphere of action must be met, not by invoking ancient maxims which deserve to be relegated to the junk-shop of economic cant, but by an appeal to history and to sound economic principles. We must be mindful of what has been accomplished in the past, throughout the world, by sane social legislation, and we may profitably study cer-

tain analogies. "Baconian legislation will always proceed by reasoning from the most proximate and analogous experience which is available." [1] The points of analogy between steps in legislation already taken and the undertaking of insurance by the state are manifest. Even in the field of insurance the state has shown a purpose to supervise and to control. Much that is stable and permanent in life insurance to-day is traceable to the state's intervention by way of direction and of restraint. The field was an attractive one for the exploitation of the many for the benefit of the few. A study of life insurance in its early days reveals the dangers which threatened if it were to remain unregulated.

The state's attitude towards pauperism furnishes another instructive analogy. If the state may assume the parental relation towards the pauper, it may properly consider the causes which lead to pauperism; it ought to be as legitimate a function of the state to seek to prevent it as to attempt to deal with it after it becomes a dangerous and incurable disease.

But the rule of action must be the same in all legislation which concerns society as such, — the rights of property, the independence, the comfort, or the convenience of the individual must yield whenever a distinct public

[1] W. S. Jevons, *State in Relation to Labor*, p. 24.

interest is subserved by an enlargement of the function of the state. The property of the citizen is held subject to the right of eminent domain; his acquiescence in that right constitutes a part of his allegiance to the supreme authority. The right of the state to condemn the property of the individual to public use is not essentially different from its right to compel vaccination or attendance upon public schools, or, if a case can be made out, to compel the insurance of those whose economic insecurity not only indicates industrial injustice, but constitutes a constant menace to society.

III

STATE INSURANCE

In the preceding chapter the general attitude of the state toward social legislation has been discussed briefly. We are to consider whether state insurance — the insurance, especially of workmen, against accidents, sickness, invalidity, and death — are within its proper and legitimate sphere.

Some of the tests of the obligation of the state in this direction are simple: Would such insurance tend to mitigate industrial injustice? to distribute more justly and automatically, in a sense, the product of labor? to contribute toward contentment among the industrially or economically weak by making more nearly equal industrial opportunity between classes? Would it tend to diminish pauperism and extreme poverty? Is it practicable or possible to accomplish fully the benefits of insurance by any individual effort? Does society need some such measure for its own well-being? Is it preëminently a suitable and legitimate subject for collective action?

The suggestion of government insurance against the vicissitudes of life is not a new one; it has been agitated for the past fifty

years in Germany, England, and France. The imperfection and inadequacy of all existing systems and plans has been recognized. It has become evident to thoughtful men that the matter should not be left entirely to private initiative and management. It has become the accepted doctrine that such insurance should be under the control of the state, as is shown by the appointment of legislative and parliamentary commissions and by the ample powers conferred upon state insurance departments.

If, then, it is objected that state insurance would be paternalistic and socialistic, it must be kept in mind that the paternal attitude toward insurance has already been taken by every civilized state in its assumption of supervision and control. And it may be fairly claimed that all insurance is in its very nature socialistic. Society, or a definite section or stratum of society, carries a burden in behalf of its members which the individual components cannot carry. The peril which menaces the individual fills him with apprehension as an individual, but he can look forward to meeting his share of the danger as a member of society with complacency. He does not seek to evade a burden but to readjust it.

Before men thought of making provision

for such events by contract it was deemed a sacred obligation among them to provide for the victims of sudden calamities, of accident, sickness, or death, as a matter of humanity or Christian charity. Whether in the form of written law or otherwise, there has been this universal sense of social obligation.

There is another feature of the matter which must be considered when we talk of the paternal aspect of government insurance. A large portion of the poverty and pauperism which prevails is traceable to the misfortunes which overtake workmen, for which they have made no provision. Precisely how large a percentage of the whole may be charged to these causes it is not material at this stage to discuss. A highly competent authority quoted elsewhere[1] would attribute at least a major portion of all poverty and pauperism to the misfortunes which overtake the poor rather than to fault. But can any kind of law be more distinctly and more odiously paternalistic than one which levies upon the property of A to support B as a pauper? which violently takes from the prosperous to support the destitute? from the thrifty for the thriftless? from the temperate and provident for the intemperate and improvident?

Now if a system can be devised under which

[1] See page 13.

the workman, as a rule, makes provision for all of the ordinary contingencies of the future, and whereby society is relieved of a large part of the burden of pauperism, we accomplish a certain end by a method quite dissimilar, while each method is distinctly paternal. It would hardly be contended that a law which compels one man to support another is to be preferred over one which compels a man to support himself.

The incidence of charges under a system of government insurance will be treated of elsewhere, but if we assume, for the moment, that all such charges are to be borne by the state, it will be seen readily that there is not any additional burden carried — only a burden in another form, whether more or less odious or irksome. As it is now, without the finest discrimination, we pension one dependent and send another to the poorhouse; we give a badge of honor to the soldier who has served or suffered on his country's battlefields, but we brand with the stigma of disgrace the soldier of industry who has suffered in health or in limb in the industrial life of his generation. Through a system of state insurance it is proposed that present methods of dealing with a certain social problem be replaced by something not more paternalistic but far more just; to readjust certain relations

between classes on more scientific and more ethical foundations.

Whether, in the aggregate, the burdens now carried by society on account of its unfortunate, helpless members would be diminished under the scheme proposed must be a matter of speculation. It certainly would seem reasonable to hope that under a systematic scheme of insurance against accidents, sickness, and invalidity there would be great economy compared with present methods, admitted to be wasteful and unscientific. It would not be optimistic to hope for the gradual eradication of pauperism and poverty under a method which leaves nothing to haphazard, but scientifically anticipates the future; to look for a more hopeful feeling among the classes that find themselves hopelessly drifting towards poverty and dependence; to look for a great increase of thrift when men themselves see that nothing is left to chance, but that they, under the encouragement of a definite plan, are themselves making provision for all the vicissitudes of the future; to look for a distinct access in true manhood when the humblest and poorest workman realizes that he is receiving a reserve of wages earned and not the odious dole of charity when vicissitudes come.

It is a trite saying that the state cannot through legislation compel thrift; to which

should be added the statement that the state ought to encourage thrift and should put no obstacles in its way. It must be admitted by all who study the subject that the state does often unwittingly encourage thriftlessness, and nowhere more manifestly than by its poor-laws and their administration.

A system which would tend to inspire hope rather than despair; which would practically banish the almshouse from the vision of those who are on the brink of poverty; which would guarantee that the hard-earned wages of the thrifty should not be levied upon to support the improvident; which would compel every industry to bear its own burdens; which would demonstrate to some degree by infallible tests something as to the true share of labor in a given product; which would reveal in all its nakedness and hideousness that predatory feature of many industries which permits capital to rob workmen of life, limb, or health in unhealthy and dangerous employments and turn over the wrecks to the care of society, — a system which would promise to accomplish these ends or a part of them is worthy the careful attention of philanthropists and statesmen.

Judgment might be challenged quite confidently upon the proposition that insurance such as is proposed is preëminently within the proper functions of a state. Let us suppose,

if we can, a civilized state whose policies have been individualistic in the extreme — a state without public education, public highways, public control or supervision of waterways, of health, of sanitation; having no care for the insane or the pauper; without a system of state insurance for workmen. Imagine this state awakening to a sense of its social responsibilities and to the need of social legislation, laying aside its conventional prejudices against collectivism and paternalism, realizing that there are many ends to be accomplished which can be reached only by collective effort. Imagine it slowly, tentatively, but with intelligent discrimination, starting upon its course, taking the step which seems of all the most urgent. Might not this state conclude that there was no object more imperative than the insurance of workmen; none appealing more strongly to the paternal solicitude which the state should have for its weaker members; none where the best efforts of the individual would be so impotent and ineffectual; that there was nothing else within the sphere of the material needs of men, affecting their protection, comfort, peace of mind, and well-being, for which collective means through law promised more beneficent results, — results, however, which have never been fully achieved without the intervention of the state.

Assuming, then, what all are inclined to admit, that insurance for workmen through some agency, private or public, is highly desirable, the grounds for state insurance would seem to be very strong.

As has been suggested, the end can be achieved only by some sort of collective effort; the propertyless individual may, by slow accumulations of savings, if his wages admit of it, make provision for old age, but he cannot prepare for the accident, sickness, or incapacity that may come without warning tomorrow. He looks for some method or plan that will combine scientific accuracy, economy of management, absolute safety and security, and practical universality.

The individual knows and can know practically nothing as to the actual risks which menace him, judged by the law of averages, or what it ought to cost him to insure against any hazard or class of hazards. The actuarial questions involved are difficult and intricate, requiring the most careful weighing of complicated statistics. The state is best qualified to procure such statistics with economy and accuracy and to prepare reliable tables of morbidity and mortality; it may also construct minute tariffs of risks, as has been done under German laws.[1] The state is already

[1] Law of July 6, 1884, sec. 28; Konrad Hartmann, *Das Gefahrentarifwesen der Unfallversicherung des Deutschen Reichs.*

partially equipped for such work, and procures for other purposes a considerable portion of the data required. No other agency or source of information would command as great confidence as the bureau of a well-regulated state. It may, too, be fairly claimed that the state is peculiarly adapted to the administration of insurance and the calculations required, as they are largely matters of mere mechanical routine.[1] The workman needs to have the cost of insurance, in its various forms, authoritatively stated, and to procure it at the minimum of cost. Thousands are to-day dissuaded from taking insurance because they realize that they must pay for it excessive rates. A competitive system, with its enormous reduplication of solicitation, exists at the expense of the insured and bears most heavily on those most needing insurance and least able to bear any unnecessary burdens. The state can provide for insurance at the very minimum of cost. Much of the work required could be brought under existing insurance departments and municipal machinery. There would be no hordes of solicitors, all of whom must earn a living; no extravagantly paid officials; no palatial offices or costly buildings; no corruption funds to control elections or legislatures.

[1] John Rae, *Contemporary Socialism*, p. 417.

There is no subject that engages the thoughts of men, involving the payment of money or the investment of funds, over which there is greater solicitude as to safety and security than that of insurance against the vicissitudes of life. For this feeling there are powerful reasons. Insurance against accidents, sickness, invalidity, and death concerns the most serious and important aspects of human affairs. If the insurer fails to perform his part of the contract, the loss may be irreparable or worse than irreparable,—the insured may not only have lost the funds invested, but through advancing age or diminished earning capacity he may have become unable to reinsure; the contract, if for an old-age pension, is to be carried out often at a far distant day, perhaps after an interval of fifty years; if the contract is for life insurance it is indefinite in its duration, but its adjustment, after the death of the insured, must be effected by others. But the contract of the state offers absolute safety and security; no incompetency, extravagance, or dishonesty of officials can impair the solemnity of its guaranty; through all ordinary mutations in political and financial affairs the state must endure; if it makes a contract to-day to be fulfilled in the far distant or indefinite future, the party interested relies upon its promises with serene confidence. The state may

offer this absolute security without the accumulation of any reserve; with the introduction of compulsion all necessity for a reserve disappears.[1]

The prudent man who makes provision for the future by accumulations of savings or by insurance, and the taxpayer, have a distinct interest in the thrift of others. They want some assurance that the state will not take from them by force a portion of their savings or property for the support of the improvident. No insurance can be deemed satisfactory or successful which is not general in its application, viewed either from the standpoint of the individual or of society. There is contagion in thrift as well as in thriftlessness, and no system of insurance can be highly successful or beneficent in its results which does not command the concurrence of all. The fatal weakness of every system which has ever been devised without the intervention of the state consists in its failure to reach those for whom it would be especially prescribed, those who constantly threaten to become a public charge or to pass a portion of their lives in extreme penury and wretchedness.

Some of the objections that are urged against government insurance have been anti-

[1] M. M. Dawson, in *Encyclopædia of Social Reforms*, edition of 1908, p. 634.

cipated. The objection that it would throw an intolerable burden upon the state will be touched upon in the chapter upon Incidence. It is sometimes urged as an important objection that state insurance would injure or, if made exclusive, ruin existing companies. This arises from a misapprehension. Existing insurance companies or institutions do not exist for their own sake, but for the sake of the policy-holder. No policy-holder would suffer harm if no further policies should be issued. Perhaps he might even be benefited because his accumulations could not be used — as they often have been — to secure new business. The solvent company can meet all its obligations to its policy-holder; beyond that he has no interest unless of a purely sentimental nature. It has been urged, even, that state insurance should be opposed because it would interfere with the employment of insurance solicitors. On one occasion, when the Canadian Government had the subject under consideration, it was indignantly asked: "Why should Government take the bread from the mouths of people who are earning their living by life insurance?" [1] This is quoted with approval as a strong argument against government insurance, but it is too puerile to waste

[1] Quoted from the *Toronto Globe* by Walford, *Insurance Cyclopædia*, v, 491.

time over. All of the legitimate work of insurance will remain to be done under any system. Whatever is beyond that is superfluous and simply parasitic. Society cannot be asked to support a body of men whose labors have no real efficiency and do not add to a desirable product. To state the question is to answer it.

If state insurance is desirable, should it be voluntary or compulsory? Compulsory insurance is sometimes denounced as though the proposition were exceptional in the consideration of the proper functions of government. The word compulsion, as applied to legislation, is an odious one. Why should the state invade the domain of the individual's choice and peremptorily decide how he shall meet his own responsibilities?

It is to be premised that there is no compulsion upon the willing. The law-abiding citizen is not conscious of any restraint under laws against disorder or crime; the thoughtful citizen does not resent the regulations which require him and his neighbors to do that which they should cheerfully unite in doing for the common good. We are accustomed by the long practice of civilized nations to a great variety of laws which are made obligatory for the benefit of all. We have compulsory education, compulsory sanitary and quarantine

regulations, compulsory requirements respecting the spread of noxious insects and plants, compulsory contributions for the support of the poor. These all rest lightly on the orderly and patriotic citizen; rather he looks upon the state as highly beneficent which secures to him all of the privileges which can be secured only by establishing uniformity of action by law for the general weal. He does not feel the tyranny of law, but realizes his ideals of liberty which can be gained only under law. He complies with laws in the consciousness that all of his neighbors, including the exceptional one who is unwilling, are doing the same in the interests of orderly government. He knows how impotent he would be alone or even with the unorganized concurrence of his fellows in gaining these valuable results. We think of compulsion as a sort of tyranny, but it can only be the tyranny of a majority in a republic. This may be odious, but less so than the tyranny of a minority. A minority despicable in point of numbers, five per cent or two per cent of a community, may by mere inertia impose its will upon the majority as long as the will of the majority is not enacted into law. The state should not invoke compulsion for trivial reasons; but when large interests are involved, concerning the welfare of the greater portion of its inhabitants, and a desired

end can be accomplished only through compulsion, it ought not to hesitate.

Is the insurance of workmen of such importance and urgency as to justify compulsion on the part of the state to secure it effectively? Such insurance cannot be made general in its application without compulsion. No form of persuasion could be effectively employed by the state which would not involve features far more objectionable than compulsion. As long as any scheme is entirely voluntary it will be evaded by the person and the class who most need insurance; the evasion of one would weaken those nearest him socially and the contagion of improvidence would spread to the thrifty. Any plan for state insurance, purely voluntary, would show in its operation the same defects which make all existing insurance institutions unsatisfactory. But it might be confidently expected, even if there had been no demonstration of the fact elsewhere, that compulsory insurance, when fully understood and appreciated, would result in the ready acquiescence of those concerned, as has been the result in the case of many other obligatory laws. Only the exceptional man would chafe under the compulsory feature. It would hardly be compulsory except in name. It is impracticable for the state in its legislation to consider the one man who is abnormal

and must be forced to do that which the other ninety-nine do gladly. If he were to be heard we should have no public education worth the name. His inertia would always retard human progress.

It has been suggested that a system of compulsory insurance would and ought to incur the opposition of workmen. To some extent this was the attitude of German workmen twenty-five years ago towards the scheme of Bismarck, especially of those who were under the influence of the extreme socialists. The most plausible ground for such opposition is that it would tend to introduce a line of social demarcation. But this position will not bear scrutiny, either as a matter of sound theory or as an appeal to experience. Lines of social demarcation are most effectively established by conditions of industrial inequality between classes. As long as there is economic dependence, there must be a lack of mutuality in industrial relations; there will be a tendency towards arrogance on the one side and undue humility, even servility, on the other. Whatever ministers to equality of opportunity tends to efface social distinctions. To secure the higher independence of the individual through social legislation is to make a stride towards genuine democracy.

The lack of mutuality is a productive cause

of friction between classes. As might have been expected, the German system of insurance has contributed to a better feeling. "Most full of promise for the future of the country are the friendly relations between the employing and the employed classes which has happily been brought about in some important industries by the compulsory coöperation in carrying out the new [insurance] laws."[1]

The workman, as well as the state to which he belongs, is deeply interested in his own efficiency, not only considered in the abstract but as related to the efficiency of competing nations. If a system of universal insurance by creating or intensifying solicitude for the life, the health, and the physical well-being of the workman thereby increases his industrial efficiency, it is a personal as well as a social economic gain and gives assurance that he is not to be at a disadvantage in an industrial competition which is world-wide. "No one can doubt that the general well-being of the working classes in Germany, which is strikingly visible to the eye and confirmed by statistics in spite of many unfavorable circumstances, is in a large measure due to the insurance system."[2] "The German system is having a profound effect on the whole phys-

[1] W. J. Ashley, *Progress of the German Working Classes*, p. 134.
[2] A. Shadwell, *Industrial Efficiency*, ii, 147.

ical welfare of the nation. The general level of vitality, and hence the working capacity, is being distinctly raised as a result of it." [1] The author first cited elsewhere pronounces the industrial efficiency in Germany as distinctly superior to that in either of its great commercial rivals, Great Britain and the United States.

Further proof of the beneficence of the German workmen's insurance is furnished in the fact that it to-day commands the almost universal acquiescence of workmen. There are criticisms, but they look for amendment, enlargement, and improvement, not repeal. It should always be somewhat conclusive evidence of the soundness of a proposition, not that it retains the approval of its friends, but that it gradually compels the assent of its opponents. It would be short-sighted in the extreme for workmen to oppose a plan for the general insurance of wage-earners against accidents, sickness, invalidity, old age, and death, — a plan whose virtue has been demonstrated on a colossal scale for a period of twenty years; a plan, too, which must infallibly reveal defects in present rates of wages so far as they have overlooked the contingencies which such insurance covers.

[1] F. A. Vanderlip, in *North American Review*, clxxxi, 925.

IV

WORKMEN'S INSURANCE IN GERMANY

THE legislation of the German Empire upon the subject of compulsory insurance for workmen was a series of events of profound social significance. Accustomed as we are to note in history the extremely slow progress of social reforms in legislative enactment, the varying insistence of public demand, the painful evolution of law through experiment and failure, we must deem this achievement of the German people as without parallel. Within a period of six years a code, revolutionary in its nature, intimately affecting the welfare of the laboring people of the nation, was perfected in its general plan, minutely elaborated in its details, and placed upon the statute books, apparently as a permanent institution.

To this swift but orderly procedure several causes distinctly contributed: There was the hereditary solicitude of the royal house for the working classes, dating at least from the declaration of Frederick the Great, that to hold the balance between classes was the supreme duty of the state; there was the

teaching of Huss and of Luther as to the obligations of the Christian state towards its members; the later discussions of German philosophers like Fichte and Hegel; still later the more definite doctrines and demands of the socialists; there had been for centuries, in some parts of Germany, an experience in the matter of insurance for those engaged in dangerous employments;[1] there had been for thirty years some familiarity with the idea of state compulsion;[2] there was especially the imperious will and the sagacious statesmanship of Bismarck. The attempts upon the life of the Emperor and the aggressive attitude of the radical socialists hastened the consummation. As a cure for what seemed to Bismarck a malignant form of socialism, he prescribed inoculation.

The imperial purpose was announced in the message of William I to the Reichstag in November, 1881. His recommendations were from time to time repeated by his successors, Frederick III and William II. The plan proclaimed contemplated three branches of insurance — against sickness, against accident, and against old age and invalidity. The laws asked for were to aid in fulfilling "the highest obligations of every community based on the

[1] Ludwig Lass, *German Workmen's Insurance*, pt. 1, p. 12.
[2] J. G. Brooks, *Compulsory Insurance in Germany*, p. 34.

moral foundations of Christianity"; they were to be "a remedy for social ills"; they were "to make Germany a refuge of peace."

The bill providing for insurance against sickness, submitted in 1881, became a law in 1883; the law respecting accidents was passed in 1884; and that respecting old age and invalidity, in 1889. These laws have been perfected in their details and extended in their scope by subsequent legislation, but the whole scheme has developed in a remarkably systematic and consistent manner. Emphasis has always been placed upon the fact that the benefits to be received were henceforth to be deemed the payment of a legal obligation and not a public charity.[1]

This legislation marks an era. It erects a mile-post from which a certain phase of social progress is to be reckoned. Legislation since effected and to be effected in other countries must in some degree trace its origin and inspiration from this source. Its distinctive feature may be regarded as a recognition of the workman's right to recompense as a part of the obligation which is due him from society. It has been said of the attitude of the German Government, that "it does not wish to be guided merely by a sense of pity over the unsatisfactory position of wage-earners, but above

[1] Sec. 77, Law of 1881.

all by a sentiment of justice. Its aim is not only to improve the material condition of workmen, but also to lessen and equalize as much as possible, in the course of time, the unhealthy contrasts between employers as a class and the working population, and more still it wishes to revive the feeling of fellowship between the two elements of production — capital and labor." [1]

This plan of insurance, as far as concerns its compulsory features, includes in its scope the principal wage-workers of the Empire; provision is made for permitting others, not under compulsion, to avail themselves of its advantages voluntarily. A few statistics indicate the extent of its operations. Taking the figures of 1902, which answer for this purpose, the population of the Empire, in round numbers, was 58,000,000; the number of wage-workers, 14,500,000; the number insured under sickness insurance was 10,320,000; under accident insurance, 19,083,000; under invalidity insurance, 13,381,000. The number insured against accidents was increased by a large number of small farmers — not included under the term wage-workers — and a considerable number who were insured in a double employment. The amount of receipts for the year was about $130,000,-

[1] Ludwig Lass, *German Workmen's Insurance*, pt. 1, p. 12.

000 for the three branches; the expenditures were about $110,000,000, and the accumulated funds amounted to $330,000,000.[1] These amounts increase somewhat from year to year; for example, the amounts paid out for the year 1904 were about $125,000,000.[2]

It is proposed to give here only a very brief sketch of the scheme. The subject was very thoroughly and exhaustively treated in the work of John Graham Brooks on "Compulsory Insurance in Germany."[3]

Insurance against sickness is compulsory upon workmen and employees in all of the main employments, which are designated in some detail in the law, such as manufacturing, mining, railroad work, commercial and business pursuits — mainly upon those receiving wages or salary of not more than $476 per annum, but upon certain classes of workmen, regardless of amount of wages. It may be extended to those engaged in domestic industry, agriculture, and forestry.

The range of accident insurance is similar and it is subject to similar extension, but it

[1] G. Zacher, *Guide to Workmen's Insurance, German Empire*, Table A. *Vide* Appendix E.

[2] C. B. Henderson, in *Charities*, xix, 1191–1192.

[3] *Fourth Special Report, U. S. Com'r of Labor*. See, also, *German Workmen's Insurance*, in five parts, Imperial Insurance Office, Berlin; and Rubinow, in *Chautauquan*, xli, 48 and 79, giving valuable diagrams and bibliographical note; W. F. Willoughby, *Workmen's Insurance*, pp. 29–87.

is compulsory on those receiving wages not exceeding $714 per annum.

Old-age and invalidity insurance applies to all workmen above sixteen years of age, to apprentices and domestic servants without regard to the amount of earnings, and to employees, teachers, etc., who earn less than $476 a year. It is intended to reach all whose economic condition makes such insurance desirable.[1] In all three branches of insurance there are provisions for extension and modification, — in some cases by rules of the Federal Council, in others by state and communal laws. It is to be noted, too, that the insurance applies without regard to conditions of health. Reckoning not only those insured, but their families, the insurance extends to more than one half of the population of the Empire. There is a wholesome provision that the insurance shall not in any case be assigned, mortgaged, or attached under legal process, nor shall the benefits be waived by any contract between the parties.

A distinctive feature of the accident insurance law is the entire abrogation of the defenses of common employment and contributory negligence. Nothing short of the intention, not even the extreme negligence of the person injured, can defeat his claim, and the

[1] L. Lass, *op. cit.* pp. 17–18.

intention must be established by criminal proceedings.[1] This may be deemed the first declaration by legislative enactment of the principle of Asquith's apothegm, "the blood of the workman is a part of the cost of the product." But while the question of negligence is practically eliminated as far as the workman is concerned, the employer may be held liable for all expenses that the association (*Berufsgenossenschaft*) may incur on account of any accident which has resulted from his intention or negligence,[2] and may be fined heavily for non-observance of the regulations imposed by the state inspectors or the trade associations for the prevention of accidents.[3]

In the way of benefits in sickness insurance the insured is entitled to free medical treatment, medicines, and remedies, or, in lieu thereof, to free treatment in a hospital; money, to not less than one half of the average wages of the class to which he belongs, to maintain his family during disability, for a period of twenty-six weeks; the same for six weeks for women during lying-in periods; in case of death, burial money amounting to twenty times a day's wages. The federal law fixes minimum amounts only which may be, and

[1] Sec. 95, Law of 1884, and sec. 8 of Law of 1887.
[2] Sec. 96, Law of 1884.
[3] K. Hartmann, *German Workmen's Insurance*, pt. 3, p. 8 .

in the majority of cases are, increased considerably by the associations — referred to later — which administer funds and are empowered to make rules.

Under accident insurance, the provisions as to medical aid, attendance, medicines, and hospital treatment are similar to those under sickness insurance, to commence at the beginning of the fourteenth week after the accident; accident benefit up to two thirds of the average annual earnings; and, in the event of death, burial money as in sickness insurance and an annuity to widow and children up to sixty per cent of earnings.

The benefits under invalidity and old-age insurance are: invalid pensions for persons who become incapacitated for labor after paying premiums for two hundred weeks and old-age pensions for those who have reached the age of seventy and have paid premiums for twelve hundred weeks. Free medical or surgical treatment and temporary aid to dependents is provided to prevent invalidity. One half of the aggregate premiums paid may be refunded in the case of a woman if she marries, in case of death before the pension becomes due, and in cases falling under the accident insurance laws. The invalidity pension does not wait for total incapacity, but becomes due whenever earning capacity is

reduced to one third of the normal capacity. Old-age pensions are given without regard to earning capacity. It may happen under the various laws that one is entitled at once to accident and invalidity insurance, or invalidity and old-age insurance, in which event it is his privilege to select the most advantageous.

The contributions for sickness insurance are made, one third by the employers and two thirds by employees; for accident insurance, entirely by employers; and for old-age and invalidity insurance, employers and employees contribute equally, the state adding to their joint contribution, for each annuity, a subsidy of $11.90 per annum. While in accident insurance the employer meets the entire charge, he is largely exempt from other liability on account of accidents. The charge varies much according to the greater or less hazard of the industry; this hazard is not averaged between the various industries, but each must meet its own. It was therefore provided[1] that establishments should be classified under a danger tariff which must have the approval of the Imperial Insurance Bureau and must be revised quinquennially. This regulation has resulted in the tabulation of all the tariffs of the Empire.[2]

[1] Sec. 28, Law of 1884.

[2] K. Hartmann, *Tariff of Risks of the Accident Insurance of the German Empire.*

For the purposes of the old-age and invalidity insurance, workmen are divided into five classes according to earnings, their contributions and the corresponding benefits being graduated according to income, although a person is permitted to insure in a class higher than that to which he belongs.

The key to the method of managing these various insurance funds is found in the idea of mutuality and self-administration. In the early stages of legislation the Government depended for the efficacy of its appeal upon this feature. It sought to utilize a multitude of existing institutions. In the matter of sickness insurance — which was first undertaken — the compulsion to insure was somewhat mitigated by the privilege of insuring through certain organizations, the insured retaining in their own hands the administration of affairs. There were five or six classes of associations all over the Empire, many of them of long standing, some even very ancient, to whom their members had been accustomed to look for aid in sickness. These were made the administrative agency for sickness insurance.

The administration of accident insurance was confided to associations of employers. To them was intrusted the accumulation of funds under the law, and the control and regu-

lation of such funds under statutes of their own enactment, subject to the supervision of the Imperial Bureau. The workmen are entitled, however, to an honorary coöperation with employers in investigating accidents and to take part in proceedings before arbitration courts and the Imperial Insurance Office.

The old-age and invalidity insurance is administered through insurance institutions which are defined geographically, the districts, thirty-one in number, each having its own insurance office. Each institution has a committee composed of equal numbers of employers and insured and manages its own affairs independently.

The determination of questions arising under these various laws rests, in the first instance, with the local institution, but an appeal may be taken from its decision, either by the insured or the local official, to a court of arbitration and thence to the Imperial Insurance Office. Through all proceedings the mere forms of law and procedure are deemed of less importance than consideration of the social and ethical questions involved. Rigid rules of evidence are not adhered to, probabilities are weighed judicially, solicitors are not required, — the party having the right to appear personally in the highest courts, — and every effort is made to avoid legal disparity

between parties who are economically unequal. Tribunals seek to render material justice and to ascertain the intention of the legislator from the social point of view.[1]

It should be added that, in addition to the obligatory insurance provided for, there may be insurance through other institutions if they make equally efficacious provision for the insured. The relief department at Krupp's, at Essen, may be taken as an example, but in that department, established in 1853, the compulsion is exercised by the employer.

The development of this scheme of insurance has displayed the care, the patience, the persistence of the German people in matters of administrative detail. It has also shown to them and to the world at large how essentially the questions involved affect society. When attention was directed to sickness in all of its features and to accidents in their various forms, it came to be realized that a state could not wisely be indifferent to anything which materially affects the working capacity of the man who toils. More than ever before it became the practical problem to prevent rather than to cure, to avoid accidents rather than to care for the victim, merely as a matter of social economy. The workingman as a part of the industrial machinery of the nation

[1] L. Lass, *op. cit.* p. 29.

was not to be left to his own narrow and untrained prudence, but the state, through this legislation, was to endeavor to minimize sickness and accidents as well as to make provision for them when they should occur. The distinct social and economical value of health, of unimpaired strength, of freedom from accidents, was to receive fuller recognition. If accidents and sickness were unprofitable for the state, they must be avoided, not merely out of a sentimental regard for the individual; if machinery was dangerous, there must be proper safeguards; if the ordinary risks of an industry were extraordinarily great, there must be extraordinary precautions; if the excessive use of intoxicating liquor tended to increase the number of accidents or otherwise to diminish the workman's efficiency, then temperance must be urged and insisted upon.

The care of the sick and injured might have been of the most perfunctory sort; there might have been a mere literal compliance with the terms of the contract of insurance and with the law; but — perhaps as the most natural and almost inevitable result — there has been a positive and growing tendency to go far beyond the strict legal obligation and to take the broadest and most humane view. A brief rehearsal of some of the measures adopted,

although fragmentary, is highly suggestive. There has been a strong tendency to extend the help which is effective and lasting. In the interests of the sick and injured there have been called into requisition the most highly trained physicians and surgeons, specialists for every form of disease or injury, utilizing the most recent discoveries in medical and surgical science; apparatus and appliances, often expensive, are furnished, such as crutches, supports, trusses, artificial limbs, false teeth; there are hospitals, clinics, sanatories, convalescent homes and recreation grounds in the country and at the seaside, with the attendance of well-trained physicians, surgeons, and nurses. There is, too, an aggressive promulgation of knowledge in regard to all these details; instruction is given to members of sick-clubs as to important principles of hygiene; courses of lectures are given; popular works are distributed for the purpose of disseminating information.

The prevention of accidents to workmen has been deemed worthy of the very careful and serious study of German statesmen and students of social science. Elaborate collections of statistics have been prepared to show the percentage of preventable accidents.[1] The

[1] G. A. Klein, *Guide to Workmen's Insurance of the German Empire.*

science of the prevention of accidents is studied in all its bearings. Research and invention are stimulated in the direction of safety appliances by prizes. Bulletins and articles in periodical reviews are published; exhibitions are held; museums and agricultural societies display special collections of devices. There are imperial laws and trade regulations making it obligatory upon employers to minimize dangers; there are state and technical inspectors and trade officials whose duty it is to see that wholesome regulations are faithfully observed; and there are heavy penalties for delinquents.

The supervision and inspection concerns itself with machinery, its dangers, and proper safety devices; with precautions against various kinds of dust, gases, vapors, and poisonous substances; with the supply of respirators and eye-protectors; with the matter of cleanliness, changing of clothes, facilities for washing and bathing; with the location, construction, lighting, heating, ventilation, and general hygienic condition of buildings; and with the matter of intemperance, long working hours, excessive exertions, protracted work in certain attitudes as bearing upon the fitness of men to work in a given industry.

It may be claimed fairly for this great scheme of insurance that it has passed beyond

the phase of experiment. It encountered in the outset, especially before the attitude of Emperor William I had been indicated, bitter criticism and opposition. A writer in a German insurance journal in 1876, five years before the message of the Emperor to the Reichstag, declared that the scheme was Utopian and was popular only with ignoramuses and pot-house politicians.[1] The change in public sentiment may be illustrated by the fact that in 1889 the old-age and invalidity law passed the Reichstag by a small majority, the revision of the law in 1899 was carried almost unanimously. While the public mind is alert to suggest improvements, there is no considerable body of men who would advocate a repeal. The plan has commended itself not only to the German people, but to increasing numbers among all the nations of Europe. While this result may be attributed in some measure to the ferment which has been working in the minds of men for a generation, it must be credited largely to the bold initiative of Germany. This took the subject out of the category of academic discussion and successfully demonstrated on a colossal scale and in a dramatic fashion what might be accomplished by a resolute will, an honest and philanthropic purpose, and tireless patience in elaboration.

[1] Quoted by Walford, *Insurance Cyclopædia*, v, 91.

It furnished a revelation as to the possibilities of sane, beneficent, social legislation. It has endured the keen scrutiny and criticism, not always friendly, of observers at home and abroad, and after a trial of twenty-five years has won their approval. They concur with great unanimity in the judgment that it has produced a deep and lasting effect upon the moral and material welfare of the working classes of the Empire.[1]

Never before, perhaps, on any arena has there been, in any brief time, through legislation, a social awakening so significant and so profound. During the same period there has been a degree of commercial industrial progress almost without parallel. We may not insist that these two facts are related as cause and effect, although that is the confident claim of competent observers; but there would seem to be a refutation of the prediction that such legislation would prove highly disastrous to the Empire in its competitive struggle with its commercial rivals.

But there have been moral results which far transcend in importance any considerations of material progress or commercial supremacy. The German people have found a solution of

[1] L. Lass, *op. cit.* p. 30; A. Shadwell, *Industrial Efficiency*, ii, 147, 161; J. G. Brooks, *Social Unrest*, p. 249; I. M. Rubinow, in *Chautauquan*, xli, 59; F. Kestner, in *North American Review*, clxxix, 445; F. A. Vanderlip, in *North American Review*, clxxxi, 922.

a problem of the greatest possible consequence to the laboring classes; they have ascertained and proclaimed to the world that there was an obligation to these classes which must be paid as a matter of right rather than of charity; that before showing mercy it was necessary to do justice.

V

ACCIDENT INSURANCE AND WORKMEN'S COMPENSATION

WORKMEN suffer no class of misfortunes which appeal more strongly to sympathy than accidents. Old age, the gradual impairment of bodily strength, even death after wasting sickness, do not come with the same tragic effect as the accident which falls like a thunderbolt out of a clear sky. It may have the most disastrous consequences; it may befall the young man in the full use of his physical powers; it may maim; it may incapacitate for labor either temporarily or permanently; it may reduce a family to poverty and helplessness in an instant. These appalling features of accidents have disposed workmen, especially in dangerous employments, to the plan of mutual protection. For example, some form of accident insurance has been in existence in certain mining regions for centuries.

But however keenly those engaged in dangerous industries have appreciated the perils which constantly menace them, the outside world has often looked on with too much indifference. We are far more impressed by the loss of 22,000 men in the two years of the Boer

War than by the fact that almost the same number were killed in railroad accidents in the United States during the three years ending June 30, 1900;[1] and the statement, often repeated, that the enormous disparity between this country and England and other countries in the matter of railroad accidents is constantly growing,[2] does not arouse us to definite action.

We justify our passive acquiescence in the existing conditions on the theory that they are inevitable, or that the workman knows and assumes all risks, and, if he meets with misfortune, has simply been a loser in the great game of life which we are all playing, or we take refuge in the exploded doctrine that, in trades that are dangerous, the workman has compensation for the danger in higher wages.

Even if accidents in this country are not excessive; if the loss in industrial efficiency from that cause is unavoidable; if the workman appreciates the risk of his work and is discriminately compensated, nothing except some form of insurance or mutual effort could make suitable provision for the uncertainties of the future.

But as a matter of fact, a comparison of this with other civilized countries leads us to be-

[1] A. Shadwell, *Industrial Efficiency*, i, 25.
[2] *Atlantic Monthly*, cii, 109.

lieve that accidents here are far more numerous than they should be.[1] We know too that the workman has no adequate data for his instruction as to the risks of any given employment compared with other employments. He may learn in a disconnected fashion that in the mines of England and Wales, of 527,000 employees 101,000 are injured each year and 1000 are killed;[2] that the percentage is nearly three times as great in the United States;[3] that there were nearly 1000 killed in the mines of the United States during the month of December, 1907; that for the year ending June 30, 1906, of about 1,500,000 employed on the railroads of the United States about 4000 were killed, being one of every 387, and over 76,000 were injured, or one in 20;[4] that of 56,000 employed on the steam railroads of Massachusetts, for an average of ten years, 70 were killed each year and 464 injured, and on electric railroads a little larger ratio.[5] But from such figures he does not deduce any law of risks or make any estimate of the cost of assuming them. Still less does he adequately weigh the comparative risk of different employments; he does not fully realize

[1] A. F. Weber, in *Political Science Quarterly*, xvii, 257.
[2] *Westminster Review*, cxxxi, 500.
[3] *Springfield Republican*, February 3, 1908.
[4] *Nineteenth Rep. Interstate Commerce Commission*, pp. 109, 129.
[5] *Thirty-eighth Rep. Mass. R. R. Commission*, pp. 47, 48.

that one employment may be five, ten, twenty, one hundred times as dangerous as another; that those engaged in destroying buildings incur risks even three hundred and fifty times as great as those engaged in manufacturing cravats by hand![1] To gather, tabulate, and apply the data bearing upon the risks of a given employment is a task of vast detail and requiring high actuarial skill. If the individual workman estimates that, for a given year, in the work of mining he has one chance in four of being injured, he may not realize how much that means for a lifetime of service, or the more important fact, viewed from the standpoint of insurance, that the accident which is his due according to the laws of chance may befall him in youth as well as in later life, at the beginning of his employment as well as at the end, during the first year or the first day as well as the last.

We must dismiss the idea that the workman, in his contract of employment, intelligently weighs the risk; and we must conclude, upon a very brief inspection, that dangerous trades really pay lower rather than higher wages, or, stated in another form, such industries command the services of only the poorly paid laborers. "To the intelligent trade-union

[1] K. Hartmann, *Das Gefahrentarifwesen der Unfallversicherung des Deutschen Reichs*, pp. 72, 75.

official it became increasingly evident that the compensatory effect of bad conditions took the form, not of higher rates paid by the employer, but of a lower grade of character among the work-people. When the conditions of safety, health, and comfort in the trade fell below the standard of other occupations, the trade-union official did not find that the members got higher wages."[1] This is necessarily the result, and especially wherever there is a surplus of labor, where the supply is artificially stimulated, or where, as in the mining and coal regions, there is the "relentless use of every known agency to keep wages (and therefore the standard of life) as low as possible."[2] It is fatuous to assume that the independence of the individual controls the rate of wages; for large classes of workmen there is no such thing as industrial freedom.

But if the workman could contract upon the basis of absolute equality and could correctly estimate the margin of risks and losses, of waste in his industrial life of every nature, he could not sanely gamble upon his possible immunity; nor could the state permit him to use improvidently each day's earnings, reckless of the contingencies of the future. If the day's wage virtually includes an amount suf-

[1] S. & B. Webb, *Industrial Democracy*, ii, 357.
[2] J. G. Brooks, *The Social Unrest*, p. 28.

ficient to anticipate accidents that may befall him, that amount, by some method, voluntary or obligatory, should constitute a reserve; this is demanded by the interests of the individual and the interests of society.

The subject of accident insurance seems to call for a full consideration of the question of employer's liability.

About seventy years ago, within a period of five or six years there were three events in the domain of jurisprudence of signal importance to the industrial world. Viewed retrospectively with reference to their bearing upon the welfare of men, they have a distinct dramatic interest.

In the year 1837 the decision was rendered in the celebrated Priestly case;[1] in 1838 Prussia enacted a memorable law relating to the responsibility for accidents on railroads; and in 1842 the Farwell case[2] was decided in Massachusetts.

The Prussian law, afterwards incorporated in the Imperial Code of 1871, apprehending with rare prescience something of the new questions which were to arise in the industrial world, may be deemed to have prefigured the present insurance code of Germany, the most striking social legislation of

[1] Priestly *v.* Fowler, 3 Mees. & W. 1.
[2] Farwell *v.* B. & W. R. R. 4 Met. 49.

the century; the two legal decisions opened a Pandora's box of woes of appalling magnitude. There were thus marked out two distinctly divergent conceptions of the obligations of the state towards workmen.

If a general on the battlefield commits a great strategical blunder which costs thousands of lives, we are thrilled with horror, but a judge may so misapprehend a critical situation as to desolate innumerable homes for generations and we dumbly acquiesce as if viewing a visitation from heaven. That such a result was produced by these decisions will be the enlightened judgment of mankind. They have inflicted unjust and grievous burdens upon two generations of English-speaking workmen; they have devastated the homes of thousands; they have aggravated beyond estimate the friction between employer and employed.

That the decision in each case constituted judge-made law is strikingly manifest from the language of Lord Abinger and Chief Justice Shaw. They deemed the cases of novel impression, to be decided with a view to the consequences of the decision, general convenience, and considerations of policy. The enlightened legislator considers the ethical as well as the economic and purely legal aspects of proposed legislation; the judge who

makes law should take the same attitude, but weighed by the standards of to-day these judges would seem to have had more regard for mere legal formalism than for ethics.

Thus was firmly established the common-employment or fellow-servant doctrine, — the principle that the workman, by his contract of service, assumes all risks of the employment, including the risks that may come through the act or neglect of his fellow servant. The doctrine has had a phenomenal development,[1] and usually in the direction of giving larger immunity to employers.[2] The dicta in the Priestly case did not justify the judgment in the Farwell case, nor did that, in view of the expressed caution against "any hasty conclusion as to the application of the rule," lay a sufficient foundation for the vast brood of cases which trace their parentage to it.

It has been said of the principle established that no such doctrine appears to exist in any country of Europe except England;[3] that it was bad law and bad policy.[4]

These cases were of such transcendent import; they so powerfully affected industrial

[1] Pollock on Torts, 7th ed. p. 96.

[2] *Harvard Law Review*, ii, 213.

[3] Pollock, *op. cit.* p. 97.

[4] Sir F. Pollock, before Royal Commission, *Parl. Rep.* 1893, vol. xxxix, pt. 1.

relations and conditions; and they have reared so formidable an obstacle for rational reform in the direction of justice to workmen that any consideration of accident insurance compels a somewhat full examination, even at the risk of the charge of traveling again a much-trodden path.

Undoubtedly it was the opinion of Chief Justice Shaw rather than that of Lord Abinger that tended to establish the law in England as well as in America.[1] "The most complete exposition of what constitutes common employment is to be found in the great judgment of Shaw, C. J. . . . which no doubt influenced the House of Lords in Bartonshill Coal Co. *v.* Reid."[2] This was the case in which the doctrine was forced upon the reluctant courts of Scotland.[3]

The facts in the Farwell case, as agreed upon, were very simple. The plaintiff, an engineer in the employment of the defendant, in the course of his employment is injured — loses his right hand — through the negligent act of a switchman, a fellow employee. Is the railroad company liable? The opinion, as befitted the importance of the principle involved, is an elaborate one; it has been

[1] J. F. Dillon, in *American Law Review*, xxiv, 180, 181.
[2] McQueen, 266; Sir Francis H. Jeune in *The Petrel*, 1893, p. 33.
[3] Pollock, *op. cit.* p. 97.

greatly admired and has been pronounced a classic. According to the better opinion of the present day, except for an unfortunate waiver by plaintiff's counsel, the judgment could have been very brief: *Respondeat superior.* The principle of that maxim should have been deemed of universal application.[1]

The decision seems to rest largely upon three supposed facts: —

That hazardous employments command higher wages, and the acceptance of higher wages indicates an assumption of the risk;

That each servant is an observer of the other and therefore knows the risk he assumes; and

That the servant may leave the service.

These questions of fact were not ascertained by a jury; the court did not seek for any expert information; but they seemed so manifest that judicial cognizance might be taken of them.

The first question was one for the sociologist or the political economist and not for the jurist.[2] Generally hazardous employments do not command higher wages. The risk has very little effect upon wages.[3] Besides, viewed broadly and from a social standpoint, it would

[1] Pollock, *sup. cit. Parl. Rep.* 1893.

[2] Taylor, *Employers' Liability*, p. 13.

[3] *Mass. Bureau of Statistics of Labor*, 1883 (Wright), pp. 60, 85; Taylor, *op. cit.* p. 14; *N. Y. Bureau of Statistics of Labor*, 1899 (Weber), p. 647; S. & B. Webb, *Industrial Democracy*, vol. i, p. 357.

be unwise in the extreme for the state to permit the workman to gamble upon his chance of escape from accident. He is virtually in the position of one who bets without the means of paying in case he loses; and he has not the data or capacity for making an intelligent estimate of the amount or value of the risk. It would be against public policy — upon which the decision is partially based — to permit him to play a game in which the state is to be the real loser if he loses.

Nor is it true, under modern conditions to which this judgment with greatly added rigors has been extended, that such fellow servants have any adequate means of observing their fellow workmen engaged in an entirely distinct branch of service. How much this engineer, running a passenger train from Boston to Worcester, passing this switchman two to four times a day in Newton, knew of his fitness, habits, or reliability, we are left to conjecture; he had nothing to do with his selection, training, or retention in service. But it would be infinitely absurd to claim that, in the complicated relations of to-day, there is any such knowledge.

Nor is it true in the broadest sense that the workman may leave the service. It might be true from the standpoint of one writing a treatise on free will; but Hamilton has told

us that "power over a man's subsistence amounts to a power over his will."[1] This was said of judges, but *a fortiori* it is true of the workman. It is well understood in the industrial world that there is no place for a workman who is, from the employer's standpoint, captious or hypercritical, or for one who should assume to advise as to the competency of a fellow servant, even in matters especially concerning his own safety. To leave one's employment as a protest would carry with it a stigma; it is one of the heinous offenses. Besides, it means usually a period of idleness for which no provision has been made, with consequent privation and suffering for a family.

But out of such supposed facts was evolved the fiction of an implied contract on the part of the plaintiff under which he assumed, among other risks, the risk that a fellow servant might be incompetent or grossly negligent, an implied contract, too, upon a point which was not contemplated by either party!

Upon this very frail and insecure foundation was based a decision fraught with momentous consequences. For many decades thousands of workmen, maimed and incapacitated, suffering, without any color of justice, from accidents on railroads and in factories, as well as the surviving widows and orphans

[1] *Federalist*, no. 79.

of the slain, were to hear the refrain of this doom which sentenced them often to lives of poverty or dependence. During all this period legislatures, royal commissions, and parliaments were to seek in vain to overcome the baleful effects of this decision.

It is much to be lamented that "considerations of public policy and general convenience" were not more broadly considered. To the great chief justice it seemed inconvenient that this corporation should suffer on account of the neglect of one of its servants whom it had selected perhaps with care; but, on the other hand, it was certainly inconvenient that this engineer should be incapacitated for life through the fault of an agent over whose selection or retention he had no control and for whose negligence he was not remotely responsible.

According to modern conceptions the solution of the problem presented would not have been difficult. Here was an industry comparatively new, with its own hazards. The corporation must replace its engine, wrecked in the same accident, negligence or no negligence; that was one of the risks of the business. Why should it not, for the same reason and out of the same resources, pay for its wrecked engineer? Why should not both losses have been deemed a part of the cost to the public? If

the traffic involved such losses, why should not the public pay for them directly? How else, with any regard to the rudimentary principles of justice, could the loss be met?

At the time of this decision the world was slowly awakening to the fact of great industrial changes. The Factory Age had come; great inventions and the application of steam to machinery were transforming the industrial world. It was gradually dawning upon the minds of thoughtful men that these great changes had made imperative new standards of law as related to industry. The problem was dimly apprehended, as indicated by the Prussian law referred to as well as by the factory legislation which had engaged the attention of England since the beginning of the century.

Possibly the chief justice was one of those who were then patronizingly characterizing the law of Prussia as the benign paternalism of a despotic power. But if Prussia reached a point in social legislation in 1838 which England attained with much difficulty in 1880, and Massachusetts in 1887; if that conception of the obligation of the state to the laboring classes in its gradual but logical development in the German Empire of to-day has challenged the attention and admiration of the civilized world, one ought, to-day at least, to discern in it some-

thing of the grasp and prescience of true statesmanship.

But in connection with the remedies which have been sought to mitigate the common-employment doctrine the law of contributory negligence must be considered. This has always borne heavily upon the workman. It is very ancient. It has been said that "it has existed from time immemorial and is not likely to be changed in all time to come." [1] The reasoning by which it has been supported savors more of the refinements of mediæval logic than of modern modes of thought. Contributory negligence is the slightest want of ordinary care contributing proximately to the injury.[2] If a workman contributes one per cent of the elements which go to make up an accident and the employer ninety-nine per cent, the workman cannot recover. Moreover, if there is no fault, if an accident is simply an incident of the business, *le risque professionnel*, or attributable to superior force, these risks the laborer is deemed to have assumed. Even, further, if there is gross fault on the part of the employer, if certain precautions have been neglected by him, if stringent provisions of law have been flagrantly violated, yet, if the workman knew of these acts of

[1] Black, C. J., Penn. R. R. Co. *v.* Aspell, 23 Penn. St. 149.

[2] Beach, *Contributory Negligence*, 3d ed. p. 23.

carelessness or violations of law, he is presumed to have waived any remedy. He is confronted with the maxim, *volenti non fit injuria*. So the very severity of treatment in many employments, overwork, excessive hours, working at too great speed, the assenting to labor under circumstances of great danger because required to do so, the necessity of satisfying the importunate demands of overseer or master as bearing upon retention or promotion, — the elements, in a word, which make care difficult or impossible, — have all been charged up to the workman; the standard of the court-room is too high for him; he is found to have been wanting in ordinary care and remediless. Under these conditions there was not a strong inducement for the employer to exercise care in the construction of buildings, in the arrangement or adjustment of machinery, in safeguarding the workman. It was cheaper to let him take his chances; to replace the killed and wounded by new recruits; to treat the human material as negligible when compared with the cost of expensive safeguards.

Data have been carefully collected from varied and widely distributed industries to indicate the source of accidents and the responsibility for them, showing that nearly one half may be charged to the *risque pro-*

fessionnel or superior force, three tenths to the fault of the employee, and about one sixth to that of the employer.[1] But in America and England, before there were any modifications of the law, the employer's share would have been much greater. Still, it has been estimated that not more than fifteen per cent ever recovered damages. When we consider the expense of litigation, the feeling engendered between employer and employee and consequent loss of any future employment, it can easily be seen that conditions would not have been much worse if there had been an absolute denial of any remedy.

England partially awakened to the gross injustice resulting from these conditions about forty years ago. The evils began to seem intolerable. In every great industrial centre there were concrete and ever-recurring illustrations of the wrongs inflicted. But it took ten years of agitation and discussion to effect the passage of the law of 1880.[2] It must be borne in mind that this is substantially the same as the law of Massachusetts of 1887, which is still in force. This measure, so mild and ineffectual as to be soon discarded as an ill-fitting garment, was strongly opposed by all the great mining, manufacturing, and rail-

[1] G. A. Klein, *Guide to Workmen's Insurance*, p. 27.
[2] 43 & 44 Vict. c. 42.

road interests. Dire disaster was predicted if it should become a law; capitalists would not put money into mines; in fact, it was even discovered that it would be a plunge into socialism!

But this law, as a measure of social equity, proved utterly inadequate. The agitation was renewed. Chamberlain characterized it as a half-hearted compromise and suggested that it should have been called, in view of the litigation which resulted, "the lawyers' employment bill." [1] Under the law the liability of the employer was almost insusceptible of proof, and the defense of common employment almost sufficient to nonsuit.[2] Asquith declared that it was an elaborate series of traps and pitfalls for the unwary litigant, barren of result, and a reproach to the legislature.[3]

The tardy awakening of England to the evils of the industrial situation furnishes a curious and instructive illustration of the inertia of public sentiment. Forty years after the decision in the Priestly case, Mr. Lowe, afterwards Lord Sherbrooke, as chairman of a parliamentary commission charged with the consideration of employers' liability legislation, reported: "The commission are war-

[1] Hansard, 1897, vol. xlviii, p. 1465.
[2] Mavor, *Workmen's Compensation*, p. 5.
[3] Hansard, 1897, vol. xlix, p. 753.

ranted in regarding these judicial innovations" (referring to the Priestly case and the doctrine subsequently developed therefrom) "with the utmost jealousy and dissatisfaction. They observe with some surprise that the common law as it was believed to be up to 1837 has been entirely altered by judicial decision, and that not in any abstruse or remote point, but in a matter which most nearly concerns Her Majesty's subjects . . . effected by means which appear to the commission to be of the most questionable nature, the inventing and enforcing a contract which never existed."[1] Before this commission Lord Justice Brett expressed the belief that there was no just and logical reason why the master should not be liable to a fellow servant and that the doctrine arose principally from the ingenuity of Lord Abinger in suggesting analogies.[2] Sixty years after the decision, while pleading for the law of 1897, Asquith said that the doctrine was invented by the bench, and was developed by the ingenuity of judges; that it had been a legitimate grievance to the working classes and had established fantastic distinctions between the position of workmen and third parties.[3] Birrell, present Secretary for Ireland, ex-

[1] *Parl. Rep.* 1877, vol. x, no. 285, p. ix.
[2] *Ibid.* p. 115.
[3] Hansard, 1897, vol. xlviii, p. 1435.

pressed himself with greater emphasis: "The doctrine was invented in 1837; Lord Abinger planted it; Baron Alderson watered it; and the Devil gave it increase." [1] The social unrest of which these discussions were the index made legislation urgent. A bill was brought in by Asquith in 1893 which proposed to abolish the common-employment doctrine virtually and in terms negatived the application of the maxim *volenti non fit injuria*. It proposed to include substantially all workmen. The bill failed through the opposition of the House of Lords to the contracting-out clause. It has been pointed out that there was thus a very narrow escape from the woes which the fervid imagination of Lord Abinger had pictured.[2] It remained for a Tory Government and the leadership of Chamberlain in the House of Commons to bring about substantial legislation in the celebrated Workingmen's Compensation Act of 1897.[3] England thus put herself in the ranks — though by no means in the front rank — of civilized nations in this kind of industrial legislation. They had been led by Germany in the compulsory insurance laws of 1883–84, which instantly challenged the attention of all the nations of Europe.[4]

[1] Hansard, 1897, vol. xlix, p. 692.

[2] A. H. Ruegg, in *Century of Law Reform*, p. 272.

[3] 60 & 61 Vict. c. 57.

[4] A. F. Weber, in *Political Science Quarterly*, xvii, 265.

Laws in the nature of compulsory insurance or workmen's compensation acts were enacted: In Austria, in 1887; Norway, 1894; Finland, 1895; France and Italy, 1898; Switzerland, 1899; New Zealand, South Australia and Spain, 1900; Sweden, Netherlands, and Greece, 1901; British Columbia and West Australia, 1902; Russia, Denmark, and Belgium, 1903; Cape of Good Hope and Queensland, 1905; and Hungary in 1907.[1]

The English Law applied to the so-called dangerous trades and extended to about half of the workmen of the kingdom — specifically to employees of railroads, factories, mines, quarries, and construction and razing of buildings; by the amendments of 1900 and 1901 those engaged in agriculture and shiplading were included. As to the employments to which the law applied, it practically abolished the common-employment and contributory-negligence defenses to actions. It has been said that while it did not — in terms — abolish the common-employment doctrine, it went far beyond its abolition.[2] It left in force the law of 1880 and the common-law remedies.

In Great Britain there has never been any

[1] *Annuaire de Législation Etrangère*, 1903; G. Zacher, *Tables*, vide Appendix E; *Bulletin No.* 74, January, 1908, U. S. Bureau of Labor, pp. 121–143.

[2] A. H. Ruegg, *Employers and Workmen*, p. 139.

serious intention, either from the standpoint of employer or employees, of receding from the position taken in 1897; but there has been constant agitation and discussion as to liberalizing the law and enlarging its scope. There as in other countries there was a disposition to make of less importance the element of special danger and to make the principle of the law applicable to all employments. In Belgium, under the law of 1903, about nine tenths of the working population were included.

Through a Parliamentary Commission, with Sir Kenelm Digby as chairman, a very thorough and exhaustive examination of the whole subject was made; a large amount of evidence was taken; the working of the law of 1897 was carefully reviewed; and the history of similar legislation in other countries was presented.[1] On the basis of the report of this commission the Workmen's Compensation Act of 1906 was passed. This law (which went into effect on July 1, 1907, 6 Edward VII, c. 58) retains the provisions of the law of 1897, which it repeals, but is applicable to 6,000,000 additional workmen, and virtually includes all workmen where the relation of master and servant exists.[2] It had been said of the law

[1] *Parl. Rep.* 1904, Cd. 2208; *Ibid.* 1905, Cd. 2269, 2334, 2458.

[2] See Appendix III.

of 1897 that it was imported from Germany in an unmanufactured state and inartistically made up.[1] The law of 1906, as well as that of Belgium and some other countries, indicates an approach towards the German scheme. This idea found expression in the memorandum attached to one of these reports: "I do not believe, however, that the principle of personal liability is one which can be effectively applied, especially in the case of small employers, unless accompanied by compulsory insurance. I am in favor of compulsion, provided insurers are offered national insurance."[2] There is an admirable treatise upon the English act of 1906, giving the text of the law, legal decisions, with appendices containing rules of procedure, forms, regulations, official publications, etc.[3]

It is perhaps natural that the United States, and especially that state which furnished the great jurist who pronounced this doom upon English-speaking laboring men the world over, have clung with tenacity to this common-employment doctrine, although there have been many attempts from the beginning to mitigate its severity. Georgia, as early as 1856, by a few lines of legislation annulled the common-

[1] Ruegg, *op. cit.* p. 146.
[2] *Mem. of Barnes*, Cd. 2208, *sup. cit.* p. 131.
[3] A. Elliott, *Workmen's Compensation Act of* 1906.

employment doctrine as to railroads and has legislated against both that and the contributory-negligence doctrine since.[1] Recently Montana,[2] and Colorado,[3] have abolished the law of common employment.

During the interval there have been legislative as well as judicial protests in great variety: sometimes to negative what seemed to be unwarranted severity in judicial interpretations; to discriminate between the liability for the negligence of a vice-principal and other common employee; to introduce a rule of comparative negligence, analogous to that in maritime law, in place of the severe rule of contributory negligence.

It is not proposed to give here any sketch of legislation upon these points; it has been summarized recently in convenient form.[4]

Yet it is undoubtedly true, as has been stated by competent authority, that the position of workmen in regard to compensation for injuries is not yet so advanced as it was in England under the law of 1880, and incomparably less advanced than in Germany,[5] and

[1] Georgia Laws, 1855–56, p. 156, Appendix B; Code, 1895, secs. 2321–2323.

[2] Laws of 1905, ch. 1. [3] Laws of 1901, ch. 67.

[4] *Bulletin No.* 74, January, 1908, U. S. Bureau of Labor, pp. 1–156; N. Y. Dept. of Labor, *Bulletin* of March, 1906, pp. 91–97; Sir K. E. Digby in *Yale Law Journal*, xvii. 485.

[5] A. Shadwell, *Industrial Efficiency*, ii. 170; W. F. Willoughby, *Workmen's Insurance*, p. 328.

that the United States stands alone among the civilized nations of the world in adhering to the law of negligence as a solution of the problem of industrial accidents, while the governments of Europe and Australia have, with one or two unimportant exceptions, made the financial burden of injuries to workmen a charge upon the particular industry.[1]

In Massachusetts, where the common-employment doctrine seems to have developed far beyond the intention of its great author, the subject attracted much attention a generation ago, undoubtedly stimulated in some degree by the parliamentary and other discussions in England and the passage of the Act of 1880. In 1882 the legislature directed the Bureau of Labor to investigate and report its conclusions. There was a thorough investigation under Carroll D. Wright, resulting in an admirable report to the legislature of 1883, in which the situation was discussed thoroughly in all its bearings. It was recommended that a law should be enacted either like the English statute or, preferably, a very simple and brief law abolishing the defense of common employment and materially modifying that of contributory negligence. Four years later, in 1887, a law was enacted which was substantially the English act. It had been

[1] *N. Y. Labor Bulletin, sup. cit.* pp. 7 and 95.

adopted in Alabama four years earlier.[1] That legislation is still in effect practically. While in England it proved very unsatisfactory to all parties after a very brief trial, we have not materially amended it. In 1903 the subject was again up for consideration in Massachusetts and a select committee was provided for,[2] to consider this among other labor questions. In its report (January, 1904) a bill was recommended[3] patterned after the English Workman's Compensation Act of 1897. It reads like a convincing document, but apparently received scant consideration from the legislature. Again, in 1907,[4] a recess committee made up from members of the legislature to consider labor questions was appointed, to report to the next legislature. In this report[5] the majority of the committee[6] oppose any substantial legislation towards providing for compensation to workmen. They repeat, with much-diminished force, the stock arguments of a generation ago, which have become threadbare and much discredited. To these brief reference will be made later. The minority of the committee renew the recommendation of the committee of 1903 that the substance of the English law be enacted or that there be a brief

[1] Civil Code, 1907, sec. 3910.
[2] Res. 1903, ch. 87.
[3] Rep. pp. 47–55.
[4] Senate Journal, p. 1165.
[5] House Document, no. 1190, January, 1908.
[6] Report, pp. 49–60.

law taking away the defense of common employment.[1]

But in this country we are still powerfully dominated by the dogmas pronounced by Judge Shaw two generations ago. He was profoundly impressed, as his defenders and imitators have been ever since,[2] by a sense of the great injustice that the employer would suffer if held liable for an accident which he could not have prevented. It is obvious enough to-day that there are three parties to be considered in the event of an industrial accident affecting workmen: the victim, the employer, and, third, the patron, the consumer, society. We cannot judge justly if we fix our minds too intently upon any one of these to the neglect of the others. We should follow the injunction by Lord Abinger in the Priestly case and "look at the consequences of a decision," the bearing upon each of these three parties. All serious accidents to workmen involve hardship and a burden which must rest somewhere. By picturing too vividly the possible consequences to one of these parties we may practically ignore the others. We can conceive of a case of novel impression being so nicely balanced that either one of two decisions may be defensible as a matter of pure

[1] Report, pp. 61–76.

[2] e. g. Judge Dillon, *American Law Review*, xxiv, 175.

legal formalism, but if we make law either as legislators or judges we must have some regard for economic and ethical considerations. In neither case can the law determine the real incidence of the burden. If it is imposed upon the workman who is injured and who is propertyless, whose working capacity, now ruined or impaired, was his only asset, he must turn it over to society upon whom he and his family must depend; if imposed upon the employer it may either result in a diminution of dividends and profits, or be added to the price of the product as a part of the cost, thus reaching society again by another route. Still, it is of the greatest economic and social consequence by which route the burden takes its course before reaching society, or any portion of the public. Meantime we cannot ignore as negligible those industries which yield large profits and yet insist that it is not socially inequitable for the profit sharers to use this human material, improvidently often, and afterwards throw the wrecks upon society.

The employer tells us that the cost of accidents cannot be added to the charge for the traffic or product, as it would make that cost too high. This is nearly equivalent to saying that while the public is not willing to pay this enhanced cost as such, it will submit if it is disguised in the form of poor-rates. We are

admonished, too, that the state or government which puts such a burden upon industry will be at a great economic disadvantage as compared with other states, practically a claim that the industry is not self-supporting, that it is parasitic. These arguments are not new. Thirty years ago the same arguments were used in Great Britain. The legislation then proposed, substantially the present law of Massachusetts, was certain to drive capital from the country, to close mines, to paralyze industry. The Attorney-General in 1876 pointed out the terrible liabilities that it would throw upon the country;[1] but neither that law nor the "revolutionary" compensation act of 1897 seems to have had that result. A little more recently the same appeal was made in Germany against the proposed compulsory insurance legislation. But it has not been heard since, and the German Empire has had a phenomenal period of development and industrial prosperity such as no nation ever surpassed. It has been claimed by very high authority that the cause of this material progress and general well-being of the working classes is largely attributable to the beneficence of these very laws.[2] These adverse arguments do not

[1] *N. Y. Bureau of Labor Statistics* (1899), p. 677.

[2] A. Shadwell, *op. cit.* ii, 147; F. W. Zahn, *German Workmen's Insurance*, pt. 5, p. 21; F. A. Vanderlip, in *North American Review*, clxxxi, 925.

take into account the immense value of measures that tend towards social peace; the importance of impressing upon employers the economic profit of saving life and limb; the wastefulness of litigation and contention resulting from a mischievous legal or industrial system; the fact that rational legislation is contagious and that other states would be disposed, compelled, to follow an inspiring example, as the nations of Europe have followed Germany.

Clearly, it would seem, the workman should be compensated for accidents that befall him through the fault of his employer; through the inevitable risks of the industry; through superior force; through the fault of a fellow workman. But there are some that come through his own negligence — about three tenths or one fourth of the whole, perhaps.[1] Why in any view of the case ought he to be compensated for these? Ordinary care, as judged by juries under the instructions of courts, really comes to mean such care as the average man would exercise — as high, probably higher. The juror, in the quiet of a courtroom, probably very much overestimates the presence of mind that he would be capable of in an emergency, the occasion when accidents occur. If we have an industry requiring a

[1] G. A. Klein, *German Workmen's Insurance*, pt. 2, p. 27.

thousand workmen, presumably five hundred of them would fall below the standard by which they must be tested. They have been selected for their working capacity and not for the alertness of mind by which they avoid accidents. But these five hundred men must work, and any impairment of the individual's efficiency or inability to work on account of injuries even through his lack of ordinary care — of which he is not quite capable — must be, in the nature of things, a part of the total cost of the industry. To what other account can it be charged? It cannot be charged to the individual, because by that very injury he has probably become bankrupt. We must revert to the maxim that "the blood of the workman is a part of the cost of the product." Obviously if an industry cannot endure that burden it is not self-sustaining. Society for its own sake and that of the individual must so regard it. No other solution of the problem satisfies intelligent, modern conceptions of social obligations.

It is surprising that the world should have been so slow to perceive how grievous and unjust the law is which has attempted to impose this burden of accidents upon the workman; slow to realize how vain and impotent this attempt has been; slow to profit by the instructive example that Germany has

shown us for a quarter of a century. We indulge in illusions. We look on complacently, persuading ourselves that we have compelled the workman to assume risks and to provide in some way for future emergencies out of his wages, ignoring the fact that the burden of such risks must virtually be borne by society. The recent report of the recess committee in Massachusetts referred to, terms society's response beneficence[1] and looks upon the provisions which most civilized nations have made as munificent.[2] But the workman who is suffering injustice from industrial and economic conditions does not wish to seem to be the recipient of beneficence as a substitute for justice.

The appalling colliery disasters in Great Britain during the sixties awakened that nation. Her statesmen and legislators began to inquire whether the market price of coal represented the real cost, and also whether the employers' exemption from liability as to these disasters might not, in some degree, account for their frequency. Employers' liability acts were advocated not only with the purpose of securing compensation for the victims of accidents, but with the expectation of diminishing their number and severity. The great cry of the workmen themselves was, We want

[1] Report, p. 53. [2] Report, p. 54.

immunity rather than indemnity. It was the claim of Salisbury, during whose primacy the law of 1897 was passed, that it would prove a life-saving mechanism. We may well regard this aspect of the question in this country where industry is carried on with less regard for human life and safety than in most others.

Viewed in its merely commercial aspects, a nation cannot afford unnecessary waste of life. It has been estimated that it costs fifteen hundred dollars to rear the boy and youth until he reaches the age for work; he becomes too costly a piece of mechanism to be exposed to needless hazards; in the highest sense, the life and health of the workman are proper subjects of the state's solicitude. Considerations of economy and philanthropy alike demand not only that accidents shall be guarded against, but that their consequences, unjust to the victim, shall as far as possible be averted.

VI

EXISTING INSTITUTIONS

In the consideration of the problem involved, — provision, more especially by or in behalf of the more needy and helpless members of a community, for the exigencies of sickness, accidents, and invalidity, — account must be taken of existing institutions. Are any of them or all of them together sufficient to furnish a solution of the problem? If inadequate, what are their limitations and defects?

Savings banks are very promptly and confidently offered as a panacea for all of the industrial or financial ills which may overtake those who have made no other provision for the future. But they are entirely inadequate and unsuitable, as a moment's consideration will show. There is not much in common between savings banks and a system of insurance. Deposits are made in savings banks in the hope of continued life, health, and earning capacity, but insurance is undertaken with a realization of the uncertainty of all of these things. The slow accumulations of savings, however steadfastly adhered to, cannot supply a fund which may be needed to-morrow on account of a sudden and unforeseen misfortune; but by

insurance the workman, if his earning capacity admits of any saving, may provide for all contingencies and industrial risks, even if they arise to-morrow. The purpose of insurance is to distribute the misfortune of the one among the many, and no individual effort of any nature can supply its place. Reference has already been made to the misleading character of the savings-bank data usually cited, and the undue importance which has been assigned to such data, either as indications of general prosperity or as bearing upon the need of a more general insurance for workmen. In the discussion of a broader insurance for those most needing it, the savings bank hardly concerns us.

Even in the matter of provision for old age the savings bank has a certain disadvantage as compared with insurance. The man of scanty earnings, for whom any saving is difficult, does not need to make provision for old age, but merely for the probability of the invalidity which comes with old age. It costs a man at twenty-five or thirty only about one half as much to provide for the contingency of old age, through a purchase of an annuity, as it would to provide for the certainty by a savings-bank deposit. The workman who cannot save enough out of his wages for the latter may provide for the former; in other words,

he can make twice as liberal provision by way of annuity as by a deposit in a savings bank. At the age of twenty it would cost to purchase a deferred annuity of $100, to commence at the age of sixty-five, only $6.50 per annum, or $123.20 in a lump sum, in a New England company.[1] But it would require a savings-bank deposit of $235 at the same age to raise the same annuity, computing interest at three per cent. The advantages of the savings deposit are obvious, in some aspects; but scientifically considered, either from the standpoint of the individual or of society, the annuity plan, or insurance, satisfies the requirements in the case of the workman whose wage is little above the "absolute minimum" of the cost of living, and the savings bank does not.

The conception of mutual self-help is natural and the practice is very ancient. Burial societies in China, the *eranoi* of the Greeks, the guilds of the Teutons in mediæval times, all speak of the human tendency towards association for fellowship and for mutual aid in times of adversity. They lacked much in system and orderly adjustment, but they indicated a strong social instinct groping towards the light. Associations more nearly resembling modern institutions are also of long standing. In some parts of Germany miners'

[1] In France it would cost only $102.81 (W. F. Willoughby, p. 121).

sick-clubs (*Knappschaftskassen*) may be traced back six hundred years.[1]

Organizations were formed in Great Britain soon after the disappearance of the guilds, having a somewhat uniform origin, constitution, and purpose, which have come to be known as Friendly Societies. They date from about the beginning of the eighteenth century, and in their present form are said to have been influenced largely by societies in London formed by the Huguenot refugees. As early as 1793 they were recognized by statute, and referred to as "societies of good fellowship"; and again in 1819 where the society is defined as "an institution whereby it is intended to provide, by contribution, on the principle of mutual insurance, for the maintenance or assistance of the contributors thereto, their wives or children, in sickness, infancy, advanced age, widowhood, or any other natural state or contingency whereof the occurrence is susceptible of calculation by way of average." These two features of good fellowship and mutual aid have always been preserved. It is probable that they engaged the attention of legislators at that date both on account of their possibilities for good and the abuses of which they were susceptible. Since that time they have often been the subject of legislation, but with

[1] L. Lass, in *German Workmen's Insurance*, pt. 1, p. 12.

a view to guide rather than to control them. They were originally organized with very little system, and were loosely and unscientifically managed. While beneficent in their declared purposes and, in the best societies, in their work, great abuses arose. Ten or twelve acts of Parliament culminated in those of 1875 and 1896. Partly through the persuasive effect of these laws and partly through the initiative of some of the sounder societies like the Manchester Unity, the general situation has improved to some extent. These statutes provide for registration and offer many inducements, but it is still optional, and less than one half of the societies of the kingdom are registered. The registered societies are required to make annual statements, quinquennial reports upon mortality, and quinquennial valuations.

These societies furnish an interesting study in social science and illustrate the evolution of a semi-scientific institution from the merely benevolent organizations of the earlier day. They form to-day a type of voluntary associations, the best, perhaps, for their purpose, in existence, when found at their best. For this reason they must enter into our consideration of systems of insurance.

But there is another side to the picture. Notwithstanding the attempts to regulate these societies and to place them on a better

and sounder basis, there can be no assurance of the competency or the honesty of their management. Canon Blackley said of them that while some were founded, supported, and managed in ignorance, a large class were fostered and carried on by systematic and deliberate villainy.[1] There could be no guaranty of their soundness or their permanence. Out of 48,000 such societies which had existed there seemed to remain only 26,000 when the Act of 1875 went into effect, and of these only 11,000 responded to the registrar's call for returns. There had been a widely prevalent disregard of proper bases of computation for contributions, assessments, and benefits, and a large proportion of all of the societies have usually been actuarially insolvent, — in 1884, five sixths of the whole.[2] In 1895 Chamberlain declared that their aggregate deficiencies amounted to $35,000,000.[3] Eight years later, in spite of warnings, it appeared by the report of the chief registrar that seventy per cent of the registered societies disclosed deficiencies, and collectively they could not pay more than eighty-three per cent of their liabilities.[4] Presumably the condition of the unregistered societies is much worse.

[1] W. J. Blackley, *Thrift and Independence*, pp. 75, 80.
[2] Blackley, *op. cit.* pp. 60, 105. [3] *National Review*, xxiv, 592.
[3] *Report*, December, 1903, p. 64.

Moreover, the wage-earner may well be diffident as to the probability of his persistence in these and similar societies. He should give weight to the statistics which indicate that probability. It has been found that out of 100,000 joining at 18 there will be, without allowing for secession, 71,353 remaining in the society at 50; but if allowance be made for secession, there will be only 15,325. In other words, while the claims of 28,647 had been paid at death, 56,028—about two thirds — had left voluntarily.[1]

We may say of these societies and all others having similar defects and characteristics that they are not necessarily upon a sound actuarial basis; that many of them are conducted at a very great expense relative to receipts, the collecting societies which deal with the lower class of wage-earners often expending more than one half of their contributions; that legislation, both in England and elsewhere, fails to control or direct them so as to give substantial protection to members; that the uncertainty and financial insecurity are such as to discourage rather than to foster thrift; that as a system they constitute a crude, inadequate, wasteful method of reaching a great social need; and that by their

[1] *Insurance and Savings;* Report of Charity Organization Society of London, 1892, p. 58.

existence they often preclude the introduction of something far better than they can offer.

Trade-unions offer mutual benefit features somewhat similar to those of friendly societies, but that is not the main object for which they are created. The criticisms which apply to friendly societies are applicable to these also, but the defects in them are even greater. The promises of the trade-unions as to the relief of members are necessarily conditional upon the state of funds at the moment. These may have been exhausted at the moment when they are most urgently needed for relief purposes. The insecurity of the friendly side of trade-unionism is inherent in the conjunction of trade and friendly purposes, but at the same time the insurance feature adds to the attractiveness and cohesiveness of the union and creates among its members a strong opposition to government insurance.[1]

This attitude of trade-unions and labor organizations towards state insurance is short-sighted. Beyond doubt a well-devised system of workmen's insurance, modeled perhaps after that in Germany, would do much for the cause of the wage-earner for the reasons elsewhere referred to. It was the declared purpose of William I, the German Emperor,

[1] S. & B. Webb, *Industrial Democracy*, ii, 529, 531.

in urging Bismarck's plan upon the German Reichstag, to promote the welfare of the working classes, and after a trial of twenty-five years his hopes as to the efficacy of the scheme have been fully realized. In this view the Social-Democratic party in Germany fully concur. There has been a growing conviction among all classes of the German people, as expressed by a competent authority, that "the tasks of social improvement fulfilled by the German workmen's insurance can neither be accomplished by a development of voluntary self-help, nor by an improved legislation on the employer's liability, nor by voluntary insurance."[1] These significant words are indorsed by many economists the world over and are entitled to the thoughtful consideration of every wage-earner and of all interested in his welfare.

Somewhere between friendly societies and the mutual-benefit side of trade-unions must rank the various forms of brotherhoods, fraternal and similar associations in this and other countries. The criticisms to which friendly societies are subject apply *a fortiori* to all such organizations. Their instability, the lack of persistence on the part of their members, and their general disregard of scientific bases of computation, render them simply unworthy

[1] L. Lass, in *German Workmen's Insurance*, pt. 1, p. 30.

of consideration in connection with a broad and general scheme of insurance.

The relief departments of large corporations or other employers belong to a distinct class. They owe their origin possibly to the very successful operation of such a department in the Krupp Works at Essen, established in 1853, which in turn was probably suggested by the miners' associations elsewhere referred to. They vary much in their management and purposes. Generally speaking, they aim to furnish surgical aid, pay during disability resulting from accidents, sick-pay, superannuation allowances, and death benefits. In some of these, as in the department of the Baltimore and Ohio Railroad, membership is compulsory; this was the case at Krupp's even before the compulsory insurance law;[1] in others (as the Pennsylvania Railroad), and more commonly, it is voluntary. In some of them the workmen are represented on the executory or advisory boards or committees, but only as a minority; the employer retains control. In so far as the employer retains control, supplies deficiencies in the fund, assumes all expenses of management, holds and manages all trust funds and holds himself responsible for them, and invites contributions to such

[1] P. P. J. Krupp, *Aciérie de M. Krupp à Essen*. Statuts, 1855, sec. 2, p. 9.

fund from the outside, there would seem to be a distinctly paternal, not to say charitable, quality in such relief departments.[1] An official of one of these entitled his address upon this subject on one occasion: "What the Pennsylvania Railroad Company is doing for the benefit of its Employees." [2] Probably there will usually be found somewhere in connection with the plan a distinct admonition that the department is not self-supporting. Perhaps this very fact appeals to the more tractable class of workmen; they may comfort themselves with the theory that this is an indirect acknowledgment that there is a residue of obligation due them from the corporation or the public, which is thus adjusted. The more captious question the altruistic motives of the employer and sometimes suspect that these measures are designed to attach employees more strongly and thus weaken their own organizations. The compulsory feature has not met with favor among workmen, but it would seem obvious that the best results could be gained if the membership were made obligatory upon all.

These relief departments have been undoubtedly of very great value in relieving distress and in promoting thrift and good

[1] *Regulations*, Penn. R. R. Relief Dept. 1906, pp. 14, 19.
[2] M. Riebenach, before the Economic Club, Boston.

feeling between employees and employers; they have had, too, a moral effect beyond their most direct results; they reach, however, even in the case of the railways of the country, only a small portion of the roads and employees. In 1904 the railroad relief departments extended to only about one fifth of the roads and one sixth of all employees.[1]

Furthermore, to the economist who looks for the ultimate assumption of all such insurance by the state, these institutions seem to be merely a step in the evolution of government insurance; they seem merely to demonstrate in miniature what might be done on a larger scale. What the corporation has done fairly well the state might do far more effectively through its larger powers. If insurance compulsory upon all employees of a given railroad has proved practical and highly beneficial, that fact suggests at least the practicability of insurance of all workmen through compulsion exercised by the state.

It is claimed by its advocates that industrial insurance, so called, supplies to a large extent what other institutions lack in provision for the needs of the workmen whose wages are low. It has been urged quite plausibly that these industrial insurance companies

[1] M. Riebenach, Address before National Civic Federation, New York, 1904.

are highly beneficent social institutions.[1] But in this view disinterested economists who have thoroughly studied the question do not concur. One of them well says: "That this form of insurance is permitted with all its abuses and deceptions is strong proof that the principles of Spencerian individualism still dominate this country." [2] The same writer expresses the opinion of all intelligent observers who are disinterested, in characterizing such insurance as little better than robbery under the forms of law, and an exploitation of the poorest and neediest, whose insurance costs them two or three times as much as the prosperous man pays for the same insurance.[3] The enormous expense of management of an industrial insurance company, with its army of solicitors and collectors, is undoubtedly an inseparable incident, and that fact alone indicates that there is something essentially wrong with the system. But the victim of such insurance does not stop with contributing to the necessary expenses, enormous as they may be. A Royal Commission appointed to investigate friendly societies in Great Britain reported that among the collecting societies

[1] John F. Dryden, *The Social Economy of Industrial Insurance.*

[2] I. M. Rubinow, in *Journal of Political Economy*, xii, 380.

[3] See, also, "Q. P." *How to Buy Life Insurance*, p. 71, and L. D. Brandeis, Address before Twentieth Century Club, Boston, October, 1906.

— whose machinery and methods most nearly resemble those of industrial insurance companies — it found a tendency on the part of the managers to forget that they were simply trustees and to look upon the concern as their own personal property. So in this country the insured finds himself not only paying legitimate expenses, but contributing to enormous dividends to stockholders and apparently to dividends to more highly favored insurers in the same company. A flagrant instance of such dividends to stockholders has often been cited, where upon an original investment of $1000 there is an annual return of $2200.[1] The percentage of withdrawals from such companies — often exceeding ninety per cent — is of great significance. The apologists for such insurance flippantly tell us that it is only the thriftless that withdraw, seeming to forget that it is not intended for well-to-do and prosperous people. But it certainly is not evidence of thrift that men should pay for anything two or three times what it is worth, and an analysis of withdrawals would probably disclose the fact that a large portion of them come from those who have been overpersuaded to attempt to carry a burden entirely out of proportion to the benefit which

[1] Massachusetts Insurance Commissioner, *Forty-Eighth Annual Report*, p. xxviii.

can result. It is not the most thrifty and sagacious man "who earneth wages to put into a bag with holes." [1]

The idea involved in assessment insurance has been at the basis of the oldest insurance known, and superficially considered it might be deemed essentially the best of all. It has come to be associated largely with fraternal organizations and secret societies. While theoretically sound in principle, such institutions are never likely to prove stable unless there is some other bond than the mere business relation of members. The most obvious difficulty in the way of their stability is the fact that, if their rates are adjusted scientifically and upon established bases of mortality, the member finds himself, with advancing years and diminishing earning capacity, liable to an assessment two, three, and four times as large as that with which he began.

There remain to be considered the old-line insurance companies, so called. These are of comparatively recent origin, having grown up within the past seventy-five years. Their remarkable growth and development are of great social and financial significance. So far as they have been conducted intelligently and with due regard to the interests of the insured, they have rendered a service of incalculable

[1] Haggai, i, 6.

value, and their beneficence has been generally recognized. But in the very nature of the case life insurance offers great temptations to unscrupulous managers, attractive opportunities for perverting a sacred trusteeship to serve selfish and personal ends. That the inherent tendency has been in some degree neutralized has been largely due to the efforts of one man and to the legislation resulting from his advocacy. How strenuously and persistently Elizur Wright labored in the interest of honest life insurance has been graphically related.[1]

But in spite of the vigilance of such men, and of stringent legislation, there has been gross mismanagement and on a colossal scale. The revelation of the corruption and recklessness which has attended the management of some of the largest companies is too recent and too well known to require repetition. The story of greed, fraud, and betrayal of trust is appalling. Such evils spread with so deadly and so rapid a contagion that if the revelation had been long postponed it may well be surmised that the whole system of life insurance would have been wrecked; at least, the public confidence, which is absolutely essential, already seriously impaired, would have been destroyed. It would be well to remember that

[1] B. J. Hendricks, in *McClure's*, xxvii, 157.

the investigations disclosed not merely a disease but a definite tendency towards disease. The course of the disease is arrested for the moment, but its reappearance only awaits another condition of public apathy, the too rapid subsidence of a righteous public indignation, and the relaxation of effective vigilance.

These recent investigations reveal certain insidious evils and tendencies which are inherent in the system of life insurance as now conducted. The lack of accountability in managing immense trust funds is not conducive to a high degree of fidelity on the part of managers, and the fact that the statistical features of the business are not easily comprehended without some actuarial training renders the policy-holder—as compared with a savings-bank depositor, for example—quite powerless to call his company to account.

But aside from these more subtle and insidious dangers to which life insurance in its present form is necessarily subject, there are certain obvious defects and limitations which make it far from an ideal institution. Success and stability must depend, more than in any other business, largely upon the capacity and fidelity of its managers. We have to-day in this country forty companies more or less prominently before the public; we have perhaps twenty that can be quite unreservedly

commended. But we do not realize that these companies are the residue of a great host that have come and gone, the survivals only a small fraction of the total. Therefore we cannot maintain very confidently that a life insurance company is inherently a stable institution.

The question of economy must also be met, the inevitable comparison of cost with result. Does life insurance cost too much? Is there something radically defective in the mechanism of its management which necessarily leads to extravagance or waste? In industrial affairs we estimate carefully the cost and efficiency of expensive machinery. Is there not the same necessity in life insurance? A generation ago Elizur Wright declared that the cost of solicitation and the general expenses of life insurance made it practically prohibitive for those most needing it; that they "could not afford the luxury of the agency expenses of existing systems." But he placed the cost of solicitation at only from six to ten per cent of all the premiums, and the expenses of management at seventeen per cent of the entire premiums for the year.[1] Since that time the cost of solicitation has greatly increased, and the expenses have risen from seventeen to

[1] *Report of Com. of Boston Board of Trade*, 1874, pp. 4 and 20; Circular, 1876, calling for subscriptions for American Family Bank.

twenty-five per cent.[1] The commissions of agents for the year 1904 in twenty-five leading companies exceeded the amount of new premiums.[2] In the thirty-three companies given in the Massachusetts report this item made an aggregate of about $80,000,000, more than one fifth of the entire disbursements of the year, including payments to policy-holders; and with other expenses, not including taxes, making more than one third of such disbursements.[3]

No one would maintain that this service, costing the policy-holders of this country for the year 1904 $114,000,000, is productive labor of a high degree of efficiency; there is somehow waste or extravagance, or both, of appalling magnitude.

The policy-holder not only pays for the services of the agent who effects the insurance upon his life; he pays for time wasted by other agents upon him, even for time wasted by agents upon the much solicited individual who never insures. In other words, there is most wasteful reduplication of effort. He pays, too, something towards princely salaries, offices extravagantly equipped and expensively

[1] B. F. Brown, *Book of Life Insurance Economics*, Table IV. The figures of 1904 are taken as perhaps indicating average and normal conditions rather than those since the New York insurance investigations.

[2] Compare Brown, *op. cit.* Table III, with *Fiftieth Report of Massachusetts Insurance Commissioner*, Table C.

[3] *Report of Massachusetts Insurance Commissioner*, 1904, Table C.

managed; he contributes to funds for the unlawful enrichment of individuals, for corrupting legislatures, and for influencing political campaigns.

From the social point of view there is another aspect of the subject which must be considered: the probable persistence of the policy-holder. The figures bearing upon this point are very significant. In the thirty-three companies referred to, of the policies terminated during the year 1904 about forty-two per cent terminated by lapse and surrender, over thirty per cent by lapse. The showing of industrial companies is very much worse; in seven companies given in the Massachusetts report almost nineteen twentieths terminated by lapse and surrender, over nine tenths by lapse. To state the matter more graphically, while in these industrial companies $24,000,000 terminated by death, $19,000,000 terminated by surrender, and $390,000,000 by lapse![1] Yet from such figures as these does the president of one of these companies doing the largest business in that line find evidence of thrift and social economy!

There has been much discussion recently of savings-bank and over-the-counter insurance. It is too early to measure the effects of

[1] *Fiftieth Annual Report of Massachusetts Insurance Commissioner*, Tables D and F.

the discussion or the resulting legislation. Movements in this direction are significant as furnishing evidence of an awakening to an urgent social need and a recognition of the wastefulness and inadequacy of existing institutions. The agitation is not new. The great apostle of life insurance in the interests of the policy-holder, Elizur Wright, advocated a scheme aiming to combine in one institution the functions of life insurance and savings banks, under which the expense of solicitation was to be entirely eliminated, and he secured the requisite permissive legislation in a charter for the American Family Bank.[1] Although the evils which he clearly recognized have greatly increased and have fully justified his apprehensions, it is doubtful whether others will succeed, in a reform of this nature, where he failed.

In surveying the whole field, then, in considering the nature of insurance, the urgent social need, especially on the part of those who rely upon their daily earnings to supply their daily wants, of making provision for the vicissitudes of life, — such provision as will bring to them some greater degree of contentment and some sense of security for to-morrow as well as for to-day, — we find a heterogeneous group of agencies seeking to accomplish the

[1] Massachusetts Laws, 1876, ch. 142, and 1877, ch. 152.

end desired. By their aims they point unerringly to a universal social necessity — to the fact that the individual can accomplish, through some form of insurance, what he cannot accomplish alone. In this field at least we admit the advantage of collective over individual effort.

But while existing institutions furnish conclusive evidence of the need, a study of them discloses the fact that no one of them nor all of them combined are adequate or even appropriate for the satisfaction of the need. While some of them might, by slight modifications, furnish the various kinds of insurance that have been referred to, — insurance against accident, death, sickness, old age, and invalidity, — they can do so only through methods which are costly, wasteful, and unscientific. They have to some extent stimulated thrift, especially among the thrifty; to some extent they have discouraged thrift, especially among the thriftless; at least, for the past fifty years, through their advocates and their armies of solicitors, they have done much towards educating the public upon the subject of insurance, so that there are few to-day in intelligent communities who do not admit its usefulness and beneficence when properly administered. It is patent to all observers that it must furnish in the future in increasing degree a bulwark

against that poverty which comes upon the propertyless through accidents, sickness, or other sudden misfortune; that it must in some way be made to reach those who do not make other provision for the future and its vicissitudes.

We must not be misled or dazzled by the stupendous figures which show the totals of insurance carried, cited often as conclusive evidence of a nation's prosperity. These figures are much swollen by the insurance of well-to-do people who least need it and in many cases would better be without it; they furnish no indication of an increasing thrift or prosperity among the poor and the needy. Besides, such vast sums suggest perils as well as benefits; their possession and control seem to lead, as shown by recent investigations, irresistibly towards greed, recklessness, corruption, and general maladministration. It is not pessimistic to suggest, in the light of recent events, that at the rate of increase of the past fifty years the directors — by no means the policy-holders — of a few great insurance companies might at no distant date control and dictate the financial policies of the nation, — a power too great to be intrusted to any private organizations.

The enlightened state is to-day ready for something better than existing institutions.

A great nation has furnished a brilliant example for our study and guidance. Under the inspiration of that example the world seems to be moving toward the solution of one of its greatest and most difficult problems.

VII

INCIDENCE

UNDER a system of compulsory insurance for workmen such as prevails in Germany and some other countries, upon whom does the burden fall? Upon whom ought it to fall as a matter of justice? The German law provides that it shall be distributed; in sickness insurance one third must be paid by the employer and two thirds by the workman; in accident insurance the whole must be paid by the employer; and in invalidity insurance a subsidy is paid by the state and the balance in equal shares by the employers and the workmen. Perhaps it would not be claimed that this distribution of the burden was strictly scientific; there was the necessity for compromise between diverse views; in accident insurance it was doubtless felt that the employer was in a position to charge the cost to the industry and recover it in a higher price to consumers, although this reasoning might be almost equally applicable to other kinds of insurance, even if not quite so obviously sound.

In the discussion of the question of the incidence of burdens there is often much con-

fusion of thought. Who pays taxes, direct and indirect? It is usually assumed that the question is very simple: that the landlord pays the tax and not the tenant; the employer and not the employee; in a word, the one who mechanically turns the fund over to the public treasury. Nothing could be simpler in the way of a solution. For example, in a recent public document issued for the purpose of furnishing valuable information one may find it carefully computed that the proper tax of a family of eight in a certain city would be $645.44 per annum, while the head of the family pays only a poll-tax of two dollars. The writer naïvely asks, "How, on the supposed income of $600, can enough be charged against him to pay a tax of $645.44?" He adds that such a person "is, in reality, a pensioner and a recipient of benefits paid for by persons who are taxed." This would seem to be the echo of an old political economist: "The poor do not, never have, and never can pay any tax whatever. A man that has nothing can pay nothing." [1] The farm laborer sometimes in the dull season works for a nominal wage, say five dollars per month and board. It might be argued that as his board is worth at least fifteen dollars a month he is a pensioner, as

[1] F. F. Fauquier, quoted in Seligman, *Incidence of Taxation*, p. 17.

he cannot pay the value of his board out of his wages.

As a matter of fact, it is immaterial who manually pays a tax. We can imagine a community where it would be the custom for the tenant to pay it rather than the landlord; the workman rather than the employer. Taxes are not paid, as a gratuity, out of some mysterious fund. They must trace their ultimate source to the product of labor. The question would be simplified if we look upon wages, when equitably adjusted, as a residue, after the payment of rent, taxes, interest, and similar charges have been deducted.

Some such general considerations should be borne in mind when we discuss the incidence of charges for workmen's insurance. The burden does not necessarily by any means fall upon the one who actually makes the payment.

There are three parties upon whom the cost of such insurance may be levied: the state, the employer, and the workman. It is sometimes loosely argued that upon whichever of these parties the assessment falls it virtually comes to the same thing — a tax upon the consumer. This view is superficial and fallacious, as will be shown.

At first sight it might seem appropriate that the state should take upon itself the whole

burden, granting compensation in case of accidents, sickness, and invalidity alike. It would be a natural transition from the support of the so-called worthy poor as now administered to the payment of specific amounts to the unfortunate soldiers of industry. The tax would be levied upon society as it is to-day. The objections are economic as well as moral and sentimental: there would be the same tendency to pauperize men as there is under the present poor-law; the state would be held out as a great benefactor of inexhaustible resources; there would be the greatest inducement to simulation of sickness and incapacity; it would bring in the evils of the soup-kitchen on a large scale. For these reasons the cost would be excessive and the evils would be cumulative.

By this method, too, the nature and the amount of the burden would be effectively disguised; the real cost of an industry could not be identified or made known; the party reaping the profit of the industry might escape its losses; the state would say to conscienceless promoters of industry, if there are such, Be as reckless as you may with the human material committed to your charge, maim with your dangerous machinery, poison with noxious gases and unsanitary surroundings, incapacitate as you may, even assail the future of the race by pitiless disregard of maternity and

childhood, — it shall cost you nothing except as you contribute to taxes largely paid by others; swell your profits and dividends, unmindful of the fact that a considerable percentage of your so-called earnings are virtually disguised in poor-rates.

But perhaps the most serious objection to the state's subsidy is ethical: As long as the state, by whatever method, carries the burden, it will inevitably be looked upon as a gratuity and the recipient will wear a badge of disgrace both in his own estimation and in that of his fellows; however stoutly it may be maintained that he is not a pauper, that he is simply receiving a delayed reward for his labors, we cannot overcome the current of thought that has been running for centuries.

There is something to be said in favor of imposing this burden upon employers or, in other words, upon industry. It may then still appear in the higher cost of goods or service. This would not necessarily mean a higher price for consumers, as is usually assumed. More correctly stated, it would perhaps result in either a diminution of profits or a higher price. If prices are already as high as the market permits, it might come out of profits; if profits are already as low as possible, considering the future maintenance of the industry, there would arise a commercial disad-

vantage in the competition with other nations possibly. Possibly rather than probably, because it is not to be assumed that nations are not to be rivals in social legislation that benefits its workmen as well as in the products of their manufactories. We should expect this rivalry as a matter of theory, but we find that it exists as a matter of fact. Germany's social legislation in the eighties almost instantly aroused all of Europe, and there were irresistible demands for such legislation in many other countries.

But at the worst, if profits are at a minimum and prices are at a maximum which cannot be passed, we simply have a demonstration that that particular industry is unprofitable — in some measure parasitic. As between the employer and the state this situation furnishes no reason why the state should assume the burden of insuring the workmen, no advantage in disguising the facts. If the industry is prosecuted at a loss the state might as well pay the loss, when ascertained, in a direct subsidy as to pay it indirectly. There would be great advantage in knowing just how far the industry was a burden upon other industries; to what extent it was a recipient of public aid, to what extent it was itself a pauper. If it is, tested by essential results, a pauper, nothing can be more odious than that it should at the same

time be paying large dividends from fictitious earnings. Essentially that industry may be deemed a pauper which exhausts the fifty years of a workman's industrial life in twenty years or fifteen or ten, as has not infrequently been the case, and leaves the remnant, the wreck, to the care of society.

Payment of insurance charges by the individual remains to be considered. Why should not the workman himself pay them? Why should he not care for his future and provide for its emergencies? Does he not in reality bear this burden, whatever the method employed, since the charge must come out of the product of labor? Does it not constitute a portion of his just wages? Assuming that a man's support for his whole life, for the productive portion and the waste alike, is to come out of the product of his labor, why should we distinguish the two? Figures indicate that, as an average, about six per cent of a man's productive years is lost through sickness;[1] he loses a less definite percentage, varying with the kind of employment, through accidents; certain amount through old age and invalidity. The amount of the loss from these sources is determinable by actuarial calculations. Being determinable, why should not the provident workman anticipate it; why should not the

[1] See p. 5, *ante*.

improvident workman be compelled to do so?

Assuming that, for the vast majority of workmen, the present rate of wages is only sufficient to meet his daily needs while his working capacity is unimpaired, — an assumption to which those who have studied the question would generally assent, — to require them to pay insurance charges would necessitate an increase in the rate of wages or a further lowering in the standard of living. An increase in the rate of wages might result in the diminution of profits or in a higher price for the product or the service.

Of course what has been said about the increased cost of product or service necessitated by insurance charges and the resulting disadvantage in competition would not apply to public service corporations. That a railroad, for example, should pay, either in higher wages or in some other form, the cost of the human material which it uses, is a proposition too axiomatic to merit discussion to-day, however it may have seemed sixty years ago. Practically this fact is recognized in the establishment of relief departments by the great railroad corporations of this country.

We must consider, too, in this connection the possibility of increased efficiency under a system of compulsory insurance made univers-

ally operative. At first sight the claim or suggestion that efficiency could be so increased might seem fanciful and visionary, but fortunately the demonstration is at hand in the experience of Germany. The results in this respect were confidently predicted in the outset by those who looked beneath the mere surface of economic phenomena. Their hopeful view prevailed over the predictions of dire commercial and industrial disaster. Their expectation of superior efficiency was merely a recognition of the distinct value to society of the conservation of industrial energy; of the fact that sickness, accidents, incapacity for labor, so far as they are preventable, are signs of industrial waste. The prudent husbandman finds it profitable to keep his beast of burden in working condition by proper housing, feeding, and care; society cannot afford to be less prudent in its care for the workman. To provide for medical and surgical aid, for hospitals and sanatoria, is not inconsistent with cold, calculating thrift so long as they contribute to higher efficiency. Beyond all of these material considerations, who will place a value in terms of efficiency upon the contentment that must come with a wise and ample provision for the future?

A common fallacy in connection with the cost and incidence of insurance charges should

be noted: It is said that if these charges, however the incidence may be adjusted, result in a higher cost of production, it will react upon the workman in an increased cost of living. But it must be remembered that the workman is not a consumer to the same extent that he is a producer. It has been authoritatively stated that one fourth of the people of the United States consume two thirds of its income and that of the other three fourths, two fifths consume more than the remaining three fifths; in other words, two fifths of the total population, comprising perhaps the majority of workmen, do not consume per capita more than one eighth or one tenth as much as the richer one fourth.[1] Obviously the workman may not suffer as much from an increase in prices as he gains by the higher rate of wages which contributes to higher prices.

The claim that it is immaterial where the incidence of insurance charges falls will not bear scrutiny. Public policy in all such matters should conform to economic facts and not be based upon fictions. If dependence, in cases of industrial misfortunes, were the result of intemperance or improvidence; if it indicated that wages, ample or excessive, had been ruthlessly squandered; if this dependence could be attributed justly to the fault or even

[1] C. B. Spahr, *Distribution of Wealth*, pp. 128, 129.

the folly of the victim; if society in its industrial adjustments had done its full duty by him, — possibly there might be righteous and wholesome discipline and warning in visiting upon him the contempt and odium which the public dependent is made to feel. But we do not believe this to be the case even in the majority of instances. Why, then, should we preserve in industrial bargaining, in the forms of law, in social usages, and in current thought, these absurd fictions? If insurance is the rational method (and no other has yet been devised) by which the workman should make provision for sickness, accidents, invalidity, and old age, for the widow and the orphan, — in other words, the method whereby he may assume all of his own burdens, — and if the protection of insurance is his right as well as his duty, why should not he himself pay the cost? Why should not his wages be made sufficient, if not already sufficient, to enable him to meet this charge? Why should he receive as a suppliant what is his of right? Why should he accept as the dole of condescending charity a portion of his just wages? Why should it be represented to him by constant iteration that society or his employer is paying the cost of his insurance, since it must ultimately come out of the product of his own toil?

It is better that the state should not be looked upon as a bounteous and indiscriminate giver; that the employer should not be exalted above his employee on account of supposed benefactions which are merely apparent; that there should be cultivated in the workman a sense of dignity rather than of servility; of manliness, self-reliance, and thrift rather than of dependence.

No statistician can now tell us, approximately even, what it costs to care for the wrecks of industry, the maimed, the sick, the infirm, the aged, the widow, and the orphan; nor can any one have a definite conception as to the incidence of the burden. But the cost of insuring against the vicissitudes of life can be actuarially determined and with increasing precision as data accumulate under a scientific system. As to a given industry we may know, with some approach to accuracy, what that industry costs in addition to the labor cost as now understood, in accidents, in sickness, in shortening the industrial life of men or impairing their capacity for work.

If it is true to-day that a large percentage of workmen are receiving a bare living wage based upon the working days and years of life, this actuarial determination of the cost of insurance would disclose just how much they lack of a real living wage; it would reveal, as

though by a chemical or other scientific test, a radical defect in the present basis of wages.

Our conclusion, then, is that the cost of workmen's insurance should fall upon workmen and should distinctly come out of their wages; that such an arrangement would accord with essential facts, and that there could be no gain through any disguise or indirection; that it would necessarily lead to a readjustment of wages wherever inadequate to conform to the requirements of a real living wage, a living wage based upon the whole life and not upon a fraction, to include the waste as well as the productive portion.

While any rational system of workmen's insurance ought to bring courage, hope, and contentment to the wage-earner, the payment of the cost out of his own wages, the realization that it is his own provision for his own future would surely inspire him with a higher spirit of manliness, of thrift, and of self-reliance.

VIII

OLD-AGE PENSIONS

THERE is said to prevail among certain barbarous tribes a simple but summary method of dealing with the aged poor: A council is called, and if the person under consideration is found to have reached a certain stage of decrepitude and dependence a feast is held in his honor, he bids his friends a last farewell and submits to the penalty of death. The victim cheerfully acquiesces in the decision that he ought not longer to incumber the earth. This would seem to be a very humane custom compared with that of most civilized nations, where the aged pauper, physically exhausted, destitute, friendless, forsaken, drags out a miserable existence in the workhouse or as the recipient of some humiliating form of poor-relief. The pathos of the situation is heightened when it happens that the unfortunate one is a veritable soldier of toil, worn out on industrial battlefields, perhaps after fifty years of ill-requited labor. His misery is sometimes emphasized by his conviction that an undefined portion of the material prosperity that surrounds him is rightfully his; that the community in which he lives and perhaps the fel-

low citizen who looks upon him with mingled aversion and pity have unduly profited by his toil.

There has always been a theory, persistent and widely prevalent, that the aged pauper has reached his condition through his own fault, through intemperance or some kindred vice, or at least through thriftlessness or extravagance. Not infrequently the self-complacent citizen who has profited possibly by the very industrial conditions which contribute to pauperism seems to discern in its evils signs of a wholesome retributive justice.

But there is a growing tendency to discriminate; statistics have been patiently gathered and marshaled and they tend to show that a very large percentage of old-age pauperism arises from misfortune rather than fault. It is idle to talk of thrift and saving without regard to the adequacy of wages. In the debate upon the old-age pension act in New Zealand one of the speakers indignantly exclaimed: "Thrift out of four shillings a day! with perhaps eight or nine mouths to feed, clothes to find, boots for their feet and books for their school!" [1] But a majority of the wage-earners of Great Britain do not get more than four shillings a day, and for a large class in the United States conditions are no better. The grotesqueness of the claim

[1] H. D. Lloyd, *Newest England*, p. 343.

that such men ought to save against old age is coming to be realized. In the more recent discussions of old-age relief we hear more of doing justice and less of bestowing charity. The preamble to the old-age pension act in New Zealand recites that it is equitable that those who, in the prime of life, helped to bear the public burdens of the Colony and to open up its resources should receive pensions, and in the debate in the British Parliament upon the recent old-age pension act, the Chancellor of the Exchequer said, in reply to the demand for a contributory plan: "The workman who has contributed health, strength, vigor, and skill to the building-up of the wealth of the nation has made his contribution." [1]

At least we are learning to make distinctions, and we speak of the deserving poor. The deserving poor! Why deserving? and of what? and from whom?

The question of civil pensions seems to take its earlier and more definite form as related to public servants. It is singular, if we reflect, that the public servant — the envy of his fellows, who eagerly secures a position where his services are usually less onerous and better paid than similar service under a private employer, who is practically guaranteed employment for a long period of service and without deduc-

[1] *London Times*, June 16, 1908, p. 5.

tions for enforced idleness, and who is frequently retained at a time of life when he would be replaced by a new recruit in private employment — that this highly favored individual should be the peculiar object of the philanthropist's regard. The public employee, school-teacher, clerk, bookkeeper, stenographer, whatever he may be, has far stronger inducements towards thrift and far less excuse for improvidence than the wage-earner in a similar class who cannot know what his earnings may be or what deductions must be made for unemployment. When the comparison is made with the lower classes of wage-earners it becomes still more significant.

The sentiment in favor of pensions to public servants, if analyzed, justifies itself on the assumption that they have been insufficiently rewarded, that something has been withheld which belonged to them, and that the state or municipality should make amends; or, if there is to be a contributory scheme, the state, distrusting the thrift and providence of its employees, constitutes itself a guardian to make provision for the future. But if there is any such reasonable presumption of inadequate compensation in favor of the public servant, how would the case stand as to the ordinary wage-earner who gets less for a similar service. Has the state a lower degree of respons-

ibility for an industrial system which results in inadequate wages than for withholding such wages from its public servants? Should the public show less solicitude for the great mass of wage-earners, upon whom its prosperity fundamentally depends, than for a small number of its immediate employees? If it owes a residue of obligation to the latter in old age, does it not *a fortiori* owe it to the former? If it may fittingly take the latter under guardianship in a contributory plan, should it not *a fortiori* the former?

The discussion of the subject of relief for the aged poor in its strictly economic and scientific aspects is recent, although their condition has always excited attention and sympathy wherever observed among civilized people. But the idea that they had a right to relief has not as a rule entered men's minds, or, if suggested, has been stoutly denied. If they applied for aid it must be in the attitude of suppliants seeking charity; any suggestion that there had been wrongs or injustice which should be righted would have been resented.

A brief sketch of the subject historically considered may not be out of place.[1]

The government projects in England nearly

[1] See J. F. Wilkinson, *Pensions and Pauperism*, pp. 7–33; also as to plans in Great Britain, H. H. Asquith, Speech on the Budget, *London Times*, May 8, 1908, p. 11.

two hundred years ago, and in Holland much earlier, to provide for deferred annuities have no relation to the present discussion, as the purpose was fiscal rather than economic — to meet the urgent need of the government for funds and not the future needs of pensioners. But as early as 1773 a plan for old-age pensions was advocated by Edmund Burke and passed the House of Commons; a little later, in 1793, a scheme was devised by Thomas Paine which he hoped might become international in its scope. The agitation in Germany in the seventies may be looked upon as the immediate stimulus to the more recent discussion. In Germany the provision for superannuation became a part of the great system of compulsory insurance for workmen. In England the scheme of Canon Blackley, doubtless suggested by the movement already taking shape in Germany, and his earnest advocacy of it, commanded attention.[1] His plan was urged upon the House of Lords by the Earl of Carnarvon,[2] and in a modified form was advocated by Chamberlain.[3] Later exhaustive inquiries were made and data gathered by parliamentary committees and by a royal commission.[4]

[1] W. L. Blackley, "National Insurance," in *Nineteenth Century*, iv, 834 (1878).

[2] Hansard, 1880, cclii, 1180. [3] *National Review*, xviii, 721.

[4] For a summary of plans proposed, including those which have

Whatever other conclusions may have been reached during the past twenty years, it is generally agreed that plans for old-age relief which are purely optional fall far short of reaching the evils which they seek to alleviate. The postal savings banks of Great Britain and the *caisse des retraites* in France, established as early as 1860, have proved highly useful to the more thrifty and better-paid workmen, but the problem of old-age poverty remains. In order to make the securing of pensions more attractive to the less thrifty classes, it has sometimes been thought advisable to add to their contributions something in the nature of a government subsidy. This was one of the features of the Blackley-Chamberlain proposal. A little later, in 1891, a measure was proposed in France by Constans and Rouvier, known as the *projet Constans*, under which the workman was to pay a small sum daily, which was to be duplicated by the employer, the state to add two thirds as much as the total.

It is interesting to note in the discussions of that day how slowly people were becoming reconciled to the idea of any plan of old-age pensions which was not entirely optional. To an English critic of the time the various plans proposed seemed to be those of "impulsive

been enacted into law, see F. Parsons, *The Story of New Zealand*, Appendix III, pp. 796–798.

philanthropists and empirical faddists." The *projet Constans* was denounced as charlatanesque.[1]

There have always been radical differences of opinion as to some of the main features of old-age pensions. What age shall be fixed upon for the commencement of old-age relief? Shall pensions be placed upon a contributory basis, and, if so, shall the state offer a subsidy as an inducement to contributions? Shall contribution be compulsory? If pensions are to be gratuitous, shall they be universal or limited according to need, merit, or other test?

The question has been studied and scrutinized from every point of view. It was proposed by Canon Blackley that the young man, at the very beginning of his industrial career, should make such a contribution to a fund, to be controlled by the government, as should entitle him to relief in sickness and old age, the latter to be fixed at sixty-five years, — the contribution to be compulsory. It seemed to Chamberlain, following in the lead of Blackley, that instead of compulsion it would be better for the government to offer such inducements in the way of subsidies as would lead to the pay-

[1] P. Leroy-Beaulieu, in *L'Économiste Français*, July 4, 1891: "Panama était l'entreprise la plus charlatanesque de ce siècle; mais voici . . . une conception financière qui n'est pas moins charlatanesque que celle défunte Compagnie de Panama."

ments of these contributions. A similar idea was advanced in the *projet Constans*. But there has been much skepticism as to whether any inducements which a government could properly offer would prove effectual in attracting any except the more thrifty. It is difficult to impress vividly upon the minds of the young the danger of old-age poverty. Neither logic nor statistics seem to carry weight with them. Whatever the risk of such a disaster, looked at from a distance of forty years it seems very remote.

The tendency of late has been to reject all optional plans — except as they are already furnished — as ineffectual without compulsion, and to reject compulsion as unsuited to the "free-born Briton" or American.

In most of the current discussion the field seems to be thus narrowed down to giving a pension at some age, either universally or to those who combine merit and need.

It was the plan of Booth in England fifteen years ago, and of Edward Everett Hale in Massachusetts later, to eliminate entirely the question of need and to make pensions payable to all. Booth justifies the plan partly upon the theory that by this method the wealthier classes who pay the larger amount of taxes would virtually pay the pensions of the poorer, the middle classes simply getting back

in pensions what they had paid in taxes toward the general pension fund. Certain considerations as to the real incidence of taxes are ignored.[1] The expense of such a scheme seems to most minds appalling and in itself sufficient to condemn it without further consideration. Booth's estimate for England and Wales was $85,000,000, and for the whole kingdom about $117,000,000, but he claimed that as an offset to the rate-payer there would be a very considerable reduction in poor-rates. In the discussion of the plan grave doubts whether the estimates were high enough were freely expressed. But it is to be questioned whether the expense of such schemes constitutes the gravest objection, and it is doubtful whether they will receive much further consideration.

While we seem to have passed beyond schemes for universal pensions, probably permanently, the world has gone far — whether wisely or not will be discussed later — in the direction of pensions as a gratuity from the state, without compulsion, without contribution, but with a sharp discrimination as to the need and merit of the applicant. The schemes already enacted into law agree in limiting the benefit to citizens; in requiring that the party shall not have been convicted within a certain

[1] *Journal of Royal Statistical Society*, 1891, liv, 600–643.

time of crime or serious misdemeanor; and that he shall not have been a recipient of poor-relief. Those are also excluded who have a certain amount of property or income, the amount of the pension if granted being diminished according to income. Plans vary as to the mode of administration, the amount of relief, and the age at which it shall commence.

Denmark may be deemed the pioneer in this field of social legislation. Her law of 1891 is administered by the communal authorities; the pension age is fixed at sixty; the amount of the pension is left indeterminate, it being provided only that it should be sufficient, to be adjusted by the authorities. But the idea took root most readily in New Zealand and the Commonwealth of Australia, countries which are coming to be looked upon as laboratories for experiments in social legislation. The law of New Zealand was passed in 1898, although it had been urged upon two previous parliaments. It provided for pensions, at sixty-five, of seven shillings per week; for public examinations of applicants who are questioned as to need, as to previous records, and as to property and income. By a later act, 1905, the amount of the pension was raised to ten shillings, and it was provided that the magistrate might, in his discretion, conduct examinations in camera. This was for the purpose of

meeting the criticism that under the earlier law many worthy persons were unwilling to submit to an examination in public. The amendments were significant as indicating a tendency in all such legislation towards provisions more liberal to the beneficiaries,—a tendency to enlarge rather than to restrict.

Victoria and New South Wales followed the lead of New Zealand two years later. The law of Victoria contained a new feature in leaving the age at which pensions should commence indeterminate to the extent of providing that they should be due upon permanent disability if resulting from labor in mines or any unhealthy or hazardous occupation. Nor did it fix absolutely the amount of the pension, merely prescribing a maximum of ten shillings per week.

It is the testimony of competent observers who have made a careful study of the subject at first hand, that these pension laws work very satisfactorily.[1] These observers place a high value upon the law and its administration in stimulating public interest and in creating a kindlier appreciation of the hardships of old-age poverty and the beneficence of the relief granted. The system has acquired so

[1] Edith Sellers, "In Danish and Russian Old Age Homes," *Nineteenth Century*, lii, 643; H. D. Lloyd, *In Newest England*, p. 362; F. Parsons, *The Story of New Zealand*, p. 461.

strong a hold upon the public in these Australasian colonies that it will be very difficult to effect any legislation in the direction of methods economically more sound.

The old-age pension act of England [1] which has been passed recently, to go into effect on January 1, 1909, follows substantially the general lines of the New Zealand law. It provides for pensions of five shillings a week, commencing at the age of seventy, the applicant being required to make out a case of merit and need. The speech of Asquith outlines the plan and discusses somewhat elaborately the details. He estimated the cost at $30,000,000 to $37,500,000, but others have placed it at $57,500,000.[2] Financial considerations determined the pension age, it being calculated that the cost with the pension age at sixty-five would be about sixty-four per cent greater than at seventy, — a very serious addition to the public burden. It was explained that the amount of the weekly pension, which seems meagre, was intended to eke out rather than to supply an adequate income. It may be deemed almost certain that there will be early agitation in favor both of lowering the pension age to sixty-five and of increasing the weekly allowance.

[1] 8 Edw. VII, ch. 40.

[2] Balfour, Speech in House of Commons, *London Times*, July 10.

As this law has been adopted by a parliament not given to hasty or ill-considered legislation, and is a social experiment to be tried on the largest scale yet attempted, it attracts world-wide attention and may well furnish the text for the discussion of the group of laws of which it forms so important a part.

The most obvious criticism to be made upon all such legislation is that it is purely empirical, and that too in a field where mistakes are almost irretrievable. The acute symptoms of a serious malady seem to be treated rather than the disease itself. The social effects of such laws, both near and remote, are entirely problematical. Whether they will promote or discourage thrift, increase or diminish pauperism, is a matter upon which there is no agreement. And it is not probable that the doubt can be satisfactorily solved for decades to come.

It is quite within limits to say that the motive which brought about the legislation in England was political rather than economic. The social demand which had been rising for more than thirty years, especially since the agitation led by Canon Blackley in 1878, made the situation acute. There was an urgent call upon Parliament to do something. The elaborate investigations of royal commissions and parliamentary committees had not fed the

hungry nor mitigated the privations and suffering of old-age penury. The attitude of the friendly societies, always hostile to any legislation which could affect their growth or prosperity, had to be taken into consideration; they have not infrequently stood athwart the pathway towards sound legislation. There was therefore the inevitable yielding to a popular demand. All idea of compulsion was rejected with the customary phrases. It was something "under which the British workman was not prepared to stand." [1] It seems to be always forgotten on such occasions that the British rate-payer has been under compulsion of a very odious sort on this very account for the past three hundred years.

Warnings against the proposed legislation and forebodings as to the future were uttered in the press as well as in the parliamentary debates. It was realized that a mistake was being made, not only grave but irreparable.

It had been pointed out by Canon Blackley in the discussion of the Booth scheme how difficult, almost impossible, it would be to restrict it in the future.[2] That would of course be true generally of legislation enacted in obedience to an unreasonable popular demand. If a pension scheme were made uni-

[1] Asquith, Speech at Birmingham, *London Times*, June 20, 1908.
[2] *Journal of Royal Statistical Society*, lv, 67.

versal, it would be impracticable afterwards to limit it to the meritorious and the needy; if made gratuitous, to make it either wholly or in part contributory; if optional, to make it compulsory.

It was said of the English bill by Arthur Chamberlain in the House of Commons that if it should become a law any contributory scheme would be impossible in the present or the future, and the "Times" editorially declared that no one believed in it or thought it would solve any difficulty, and that it would perhaps be impossible to "revert to any scheme based on scientific and economic principles."[1]

It has been claimed that statistics show that in Great Britain, out of 1000 men living at the age of twenty, 500 will be living at sixty-five, and 200 after reaching that age will become paupers. It has been stated too that eight ninths of the pauperism beyond that age is old-age pauperism.[2] A wage census cited by the Chancellor of the Exchequer shows that fifty-seven per cent of the wage-earners of the kingdom earn less than twenty-five shillings per week. These figures are significant of a situation whose gravity need not be emphasized. It was time for Great Britain to act. But she has embarked upon an uncharted sea.

[1] *London Times*, May 6, June 10, *et passim*.
[2] Booth, *sup. cit.* p. 631.

She enters upon an experiment whose cost will be enormous though vague. It can hardly be doubted that she has made a colossal blunder of which the financial cost will be almost negligible compared with the serious economic consequences. The return to sane legislation will be slow and painful.

In the discussion of the subject of old-age relief it is not always clearly seen that there are two problems involved: To cure a system which is radically defective and to alleviate the present evils which are the result of that system. The treatment which is appropriate for the relief of the acute suffering from the disease has no necessary relation to the cure of the disease itself. From whatever point of view we look at it, we must agree that old-age poverty is the result of an industrial or economic system which is at fault somewhere. The correction must come through radical legislation, but upon scientific economic principles.

Unquestionably relief for the aged pauper of to-day must be sought through legislation, provisionally for the prospective pauper of ten or twenty years hence; but we may not wisely by the same law seek to deal with the future of the young man of thirty or twenty in view of a possible catastrophe forty or fifty years in the future, which might be averted by rational treatment. In the one case we attempt to

atone, in a rude fashion, for an error committed long ago; in the other we propose to provide for an error which we are to commit continuously and indefinitely.

It is becoming the fashion to speak of provision for old-age pauperism as an act of right and justice and not of charity; but in the nature of the case there can be only a rude semblance of justice in methods proposed by legislation like that in England and New Zealand. The examinations into the merits of applicants must necessarily be somewhat inquisitorial. It was humorously suggested in the debate in the House of Commons that there was not a member of the House who could qualify on the industrial test imposed by the English Act of 1908, that he had always worked according to his ability. As the administration of the law depends largely upon local boards, there will be much diversity in its interpretation. Possibly in effect there will be merely another grade of poor-relief; — the almshouse or the workhouse for the lowest class of paupers; outdoor relief for those who are deemed more worthy, perhaps for many who fail to furnish proof as to age or merit; and pensions for the deserving poor. There will be little gain, from the moral standpoint, if the recipient of a pension is still looked upon as accepting charity.

But of those elevated to the ignoble nobility of the deserving poor there must be all degrees of merit. If the state owes the old-age pauper something as a matter of justice, does it owe him five shillings a week, or ten, or some other sum? If it seeks to compensate the wage-earner for the ill-requited toil of fifty years, what tribunal could determine what was his due? And at what age shall he be deemed to have earned exemption from toil? Shall it be at seventy, or sixty-five, or sixty, or, in the event that old age has been brought on prematurely by the nature of his occupation, at permanent disablement? In the laws referred to it has generally been thought expedient to fix these data arbitrarily and to leave little to the discretion of those who administer them. Even in the exclusion of the least worthy, so called, there must often be a failure of abstract justice. We speak confidently about the deserts of those whose poverty can be traced to improvidence and vice, but we forget that improvidence and intemperance are often the result of poverty, of those hard industrial conditions which tend to impair moral vigor, to lessen resistance, and even to disturb the natural balance of men's minds.

These considerations are pertinent as showing the great difficulties which surround this problem of old-age poverty and the danger of

treating it superficially rather than scientifically. Our attitude in the past has been deemed charitable rather than economic, but it has not been entitled to that term. The Church once enjoined upon the prosperous the duty of giving to the poor in obedience to a divine command always binding upon the hearts and consciences of Christians. The tax-payer of to-day, yielding up poor-rates grudgingly, responding to force rather than any Christian or humane obligation, does not belong in the same category as the mediæval Christian. The State does not concern itself as the Church did as to the state of mind of the giver.

If we reject as unscientific and in the broadest sense impracticable the schemes outlined in recent legislation, what fundamental principle shall be applied to future projects? The answer can be comprehended in a sentence. They must be contributory and they cannot be made effectually contributory without compulsion. Whether the wage-earner reaches old-age poverty through his own fault or that of society, the fault should be corrected in its early rather than in its late stages, when we apply palliatives rather than remedies. If adequate wages have been wasted throughout the period of the workman's industrial efficiency, some measure should prevent it, to the end

that we shall not levy upon the thrifty for the support of the thriftless. This suggests contribution on the part of the improvident and necessarily compulsion.

If, on the other hand, we conclude that the old-age pauper has been the victim of industrial conditions which make saving practically impossible, we should still administer the remedy at the beginning; if a portion of his wages have been withheld from him, an account should be kept of what margin remains due.

In the discussion of the scheme of contribution enforced by compulsion we are accustomed to the sneer at compulsory thrift. The phrase reveals a misconception of the function of such legislation. We may compel the practice of thrift if not the virtue, as we may compel education or obedience to criminal law. But we may encourage thrift among the thrifty by removing the burden which has been imposed upon them of supplying the defects of the thriftless. It might not be oversanguine to hope that a habit of thrift would be acquired even under compulsion. The law of Elizabeth has been tried for three hundred years as a mode of dealing with the problem of pauperism, with deplorable results; when Germany's experiment of compulsory insurance for old age has been tried as long, what

may not be expected in moral and economic regeneration!

If, then, there must be insurance against old age and invalidity, and if it must be contributory and compulsory, how shall the charges be met? There can be but one logical answer: The cost must be borne by the industry which consumes labor. The group of workmen in a given employment virtually dedicate their lives to it. To it they bring all that they have to offer of labor and of industrial skill during life. They are bound to it by a sort of inheritance, by training, and by the immobility of labor. Their reward for toil, both for the productive and the unproductive periods of life, must, by immutable law, either come from that particular industry or must at some point be supplied by society at large. The industry cannot rightfully do less than to meet the obligation. The question of incidence is discussed elsewhere.[1]

The subject of old-age and invalidity relief is of transcendent importance. No other social question of the present more urgently demands sagacious legislation. It cannot be regarded simply from the standpoint of finance or expediency, nor with regard to temporary relief of acute suffering which happens to appeal to our sympathies.

[1] Chapter VII.

We must seek for a solution which will be adequate, not merely to pacify the superficial sentiment of to-day, but to justify us in the less indulgent but more enlightened judgment of the future.

IX

CONCLUSION

THE impressive fact connected with insurance for the wage-earner is his economic insecurity. He is continually in a state of unstable equilibrium. However satisfactory and secure the present may seem, the future must be clouded with uncertainty and apprehensions of possible disaster. His prosperity for the present moment depends upon his capacity for labor and his employment at a living wage; but that gives him no assurance as to the future. As long as his daily wages are exhausted in meeting his daily needs, the workman is gambling upon his possible immunity from accident, sickness, or other misfortune. Unfortunately that is the ordinary test of a living wage — a remuneration adapted to days of sunshine and not to all kinds of weather that may befall.

Even judged by this imperfect standard, it seems to be the concurrent judgment of most of those who have examined the subject, without prejudice or self-interest, that the vast majority of workmen in this country and elsewhere receive less than a living wage. Nor, viewed from another aspect, by a similar concurrence of judgment, does he receive his due

share of the product of labor. While there is essentially a partnership between capital and labor, one of the parties arrogantly and arbitrarily decrees what the other shall receive. He bases his action upon the law of supply and demand, but reserves to himself the right to take every possible advantage of the immobility of labor and to use the immense economic advantage which he has to interfere with the law of supply and demand by artificially increasing the supply at his pleasure. The great injustice which the laboring man has usually suffered from his contractual inequality has been tremendously accentuated with the introduction of machinery and the application of steam and electricity to industry.

Meantime the state has usually shown far greater solicitude for the rights of property than for the rights of man. According to Joseph Chamberlain: "The rights of property have been so much extended that the rights of the community have almost altogether disappeared, and it is hardly too much to say that the prosperity and comfort and the liberties of a great proportion of the population have been laid at the feet of a small number of proprietors, who neither toil nor spin." It has been said that all of the jurisprudence of civilized countries is bourgeois — which is to

say that those who make and interpret laws are mainly from the bourgeoisie and from the upper classes and are humanly affected by their environment. This characterization finds illustration in the swift enactment of a "Statute of Labourers" frequently reënacted with cumulative severity, condemning the toilers of England to a condition worse than feudal servitude, as compared with factory acts and workmen's compensation acts which can be successfully opposed for decades.

These points are alluded to as bearing upon the claim, so frequently as so thoughtlessly made, that the wage-earner's poverty, helplessness, and dependence are the result of the lack of thrift and of improvidence, regardless of the fact that he makes no provision for the future for the reason that he cannot even meet the far more imperious wants of the present.

But waiving the question whether the workman receives a living wage measured by the defective standard of his daily needs under normal conditions, it must be manifest that it does not usually go beyond that. The labor contract is ordinarily entered into as though there were to be nothing but sunshine and fair weather in the industrial world.

How long, in a given industry, a man's capacity for labor may endure, whether fifty years or — as has been the case in unhealthy

employments — twenty years or ten; how great the average peril from accidents; what additional losses from the ordinary vicissitudes of life, — all of these matters are either utterly ignored or very inadequately considered.

Assuming that the working capacity should last fifty years, what ought an industry to pay which exhausts that capacity in twenty years, with a probability of thirty years of invalidity? What if it threatens a loss of from five to fifteen per cent through sickness? What allowance shall be made for accidents with a risk ranging from one thirty-fifth of one per cent to ten per cent of the wages? And is it tolerable that the trade which involves the maximum of risk shall pay even less wages than the one involving a minimum? Would not a system of insurance for all, scientifically adjusted, unveil the nature and extent of defective scales of wages and suggest a remedy which would lead towards economic justice and industrial equality.

Starting with what may be deemed a fair rate of wages, judged by the ordinary standards of the past, it is actuarially practicable to determine the average loss from premature death, from invalidity, from accidents, and from sickness; what percentage of the annual wage these items in the aggregate constitute,

and what must be added to wages to cover them.

It would be unprofitable at this time to discuss anything but the merest outline of a scheme of insurance for workmen in this country. In general, the German scheme must be the guide, as it has been for most of the countries of Europe. But the administration of the German law is extremely complex. This complexity was largely the result of compelling circumstances. It was necessary to take a conciliatory attitude towards friendly societies and other existing organizations, and to utilize their machinery; especially necessary to preserve to the utmost, in the new law, the idea of mutuality and self-help which those institutions had stimulated. Thus the government could avail itself of the efficient machinery already in operation and at the same time an opposition to the insurance measures, otherwise certain, was skillfully disarmed. The resulting system, one of great complexity and infinite detail, could be greatly improved upon by any state taking up the subject anew; indeed it seems probable that the German administration of its workmen's insurance may be radically revised in the direction of methods more simple and more scientific. Nor is the adjustment of the incidence of the burden of insurance, distributed between

the state, the employer, and the workman — a concession, perhaps, to current prejudices — worthy of imitation. It is objectionable, as suggested elsewhere, as serving to confuse and disguise important economic facts and tending to foster in the minds of both parties to the labor contract the mischievous notion that the workman is a recipient of the bounty of the employer or of the state.

It would not be difficult to frame a practical scheme for workmen's insurance for a state like Massachusetts. It would perhaps follow in its general features the German law. It would indicate those upon whom the insurance should be obligatory, the amount of insurance to be carried, the several purposes to which it should be applicable, the amount of premiums, and the mode of payment. It could permit insurance through existing organizations but prescribe that it should be effected through the state unless equivalent provision had been made elsewhere subject to the approval of the Insurance Department. It might contemplate voluntary payments on the part of the insured, but direct that in case of failure to make such payments the employer should meet the insurance charges out of the wages of the employee.

The law would specify minutely under what conditions benefits should be paid; how long a

period of disability from accidents should be covered and the amount payable, based upon wages; how much and what sick-pay should be allowed; in what form insurance should be paid in the event of death, whether by annuities or otherwise; at what age pensions should commence and what should constitute invalidity. It would also prescribe under what conditions medical and surgical attendance should be rendered and make provision for the construction of adequate hospitals and sanatoria.

For the administration of such a plan the state is already partially equipped. It has a highly efficient insurance department and an insurance commissioner with large powers of supervision, control, and direction. This department can perform all of the actuarial work required for the proposed system. It can prepare and publish tables of morbidity and tariffs of risks, somewhat tentative at first but gradually attaining a high degree of accuracy. It could advise Richard Roe at any time of life and engaged in any kind of employment just what it will cost him per year, in a single item, to insure against death, accidents, sickness, invalidity, and old age.

The department would doubtless find it convenient to make use of the assessors in the cities and towns throughout the state in acquiring the data needed for its purposes. It

would add but slightly to the work of the assessors, in their annual canvass of the state, to procure the additional information. In addition to the work of the insurance department and the assessors, there would be needed in each town or ward of a city an insurance agent whose work would be done under the direction of the department.

For the inauguration of such a system in Massachusetts, for example, hardly more is needed than an intelligent and definite purpose. There is not needed the constructive statesmanship of a Bismarck. The way has been blazed; the experiment of a quarter of a century ago has proved manifestly successful. "The Utopia of yesterday has become the terra cognita of to-day."

APPENDICES

APPENDICES

APPENDIX A

(Section 25 of the Prussian Railroad Law of Nov. 3, 1838.)

"THE Company is required to make good any injury which may arise to any goods or any person carried on any railroad, or to other goods or persons, unless it can prove that such damage was due to the negligence of the injured person, or the result of unavoidable external accident. But the dangerous nature of the enterprise is not an explanation of an accident which excuses from the payment of damages."

APPENDIX B

(Georgia Laws of 1855 and 1856, No. 103, Sec. III.)

The several railroad companies of this state shall be liable to pay damages to any officer, agent or employee of any such company who may be injured while in the service of any such company, by the carelessness, negligence or improper conduct of any of said companies or any of the other officers, agents or employees of said companies by the running of the cars or engines of said companies.

(Georgia Code of 1861.)

SEC. 2978. A railroad company shall be liable for any damage to persons, stock or other property, by the running of the locomotives, cars or other machinery of such company, or for damage done to any person in the employment and service of such company, unless the company shall make it appear that their agents have exercised all ordinary and reasonable care and diligence, the presumption, in all cases, being against the company.

SEC. 2979. No person shall recover damages from a railroad company for injury to himself or his property when the same is done by his consent, or is caused by his negligence. If the complainant and the agents of the company are both at fault, the former may recover, but the damages shall be diminished by the jury in proportion to the amount of fault attributable to him.

SEC. 2980. If the person injured is himself an employee of the company, and the damage was caused by another employee, and without fault or negligence on the part of the person injured, his employment by the company shall be no bar to recovery.

APPENDIX C

(From Chapter 106, Revised Laws of Massachusetts, with amendment of 1906. The not very important amendments of 1908 are not incorporated. It is substantially the law of 1887, modeled after the so-called Gladstone Act — the English law of 1880.)

SECTION 71. If personal injury is caused to an employee, who, at the time of the injury, is in the exercise of due care, by reason of:

First, A defect in the condition of the ways, works or machinery connected with or used in the business of the employer, which arose from, or had not been discovered or remedied in consequence of, the negligence of the employer or of a person in his service who had been entrusted by him with the duty of seeing that the ways, works or machinery were in proper condition; or,

Second, The negligence of a person in the service of the employer who was entrusted with and was exercising superintendence and whose sole or principal duty was that of superintendence, or, in the absence of such superintendent, of a person acting as superintendent with the authority or consent of such employer; or,

Third, The negligence of a person in the service of the employer who was in charge or control of a signal, switch, locomotive engine or train upon a railroad;

the employee, or his legal representatives, shall, subject to the provisions of the eight following sections, have the same rights to compensation and of action against the employer as if he had not been an employee, nor in the service, nor engaged in the work, of the employer.

A car which is in use by, or which is in possession of, a railroad corporation shall be considered as a part of the ways, works or machinery of the corporation which uses or has it in possession, within the meaning of clause one of this section, whether it is owned by such corporation or by some other company or person. One or more cars which are in motion, whether attached to an engine or not, shall constitute a train within the meaning of clause three of this section, and whoever as a part of his duty for the time being physically controls or directs the movements of a signal, switch, locomotive engine or train shall be deemed to be a person in charge or control of a signal, switch, locomotive engine or train within the meaning of said clause.

SECTION 72. (As amended by Chapter 370 of the Acts of 1906.) If the injury described in the preceding section results in the death of the employee, and such death is not instantaneous or is preceded by conscious suffering, and if there is any person who would have been entitled to bring an action under the provisions of the following section, the legal representatives of said employee may, in the action brought under the provisions of the preceding section, recover damages for the death in addition to those for the injury; and in the same action, under a separate count at common law, may recover damages for conscious suffering resulting from the same injury.

SECTION 73. If, as the result of the negligence of an employer himself, or of a person for whose negligence an employer is liable under the provisions of section seventy-one, an employee is instantly killed, or dies without conscious suffering, his widow, or, if he leaves no widow, his next of kin, who, at the time of his death, were dependent upon his wages for support,

shall have a right of action for damages against the employer.

SECTION 74. If, under the provisions of either of the two preceding sections, damages are awarded for the death, they shall be assessed with reference to the degree of culpability of the employer or of the person for whose negligence the employer is liable.

The amount of damages which may be awarded in an action under the provisions of section seventy-one for a personal injury to an employee, in which no damages for his death are awarded under the provisions of section seventy-two, shall not exceed four thousand dollars.

The amount of damages which may be awarded in such action, if damages for his death are awarded under the provisions of section seventy-two, shall not exceed five thousand dollars for both the injury and the death, and shall be apportioned by the jury between the legal representatives of the employee and the persons who would have been entitled, under the provisions of section seventy-three, to bring an action for his death if it had been instantaneous or without conscious suffering.

The amount of damages which may be awarded in an action brought under the provisions of section seventy-three shall not be less than five hundred nor more than five thousand dollars.

SECTION 75. No action for the recovery of damages for injury or death under the provisions of sections seventy-one to seventy-four, inclusive, shall be maintained unless notice of the time, place and cause of the injury is given to the employer within sixty days, and the action is commenced within one year, after the accident which causes the injury or death. Such notice shall be in writing, signed by the person injured or by a per-

son in his behalf; but if from physical or mental incapacity it is impossible for the person injured to give the notice within the time provided in this section, he may give it within ten days after such incapacity has been removed, and if he dies without having given the notice and without having been for ten days at any time after his injury of sufficient capacity to give it, his executor or administrator may give such notice within sixty days after his appointment. A notice given under the provisions of this section shall not be held invalid or insufficient solely by the reason of an inaccuracy in stating the time, place or cause of the injury, if it is shown that there was no intention to mislead, and that the employer was not in fact misled thereby. The provisions of section twenty-two of chapter fifty-one shall apply to notices under the provisions of this section.

SECTION 76. If an employer enters into a contract, written or verbal, with an independent contractor to do part of such employer's work, or if such contractor enters into a contract with a sub-contractor to do all or any part of the work comprised in such contractor's contract with the employer, such contract or sub-contract shall not bar the liability of the employer for injuries to the employees of such contractor or sub-contractor, caused by any defect in the condition of the ways, works, machinery or plant, if they are the property of the employer or are furnished by him and if such defect arose, or had not been discovered or remedied, through the negligence of the employer or of some person entrusted by him with the duty of seeing that they were in proper condition.

SECTION 77. An employee or his legal representatives shall not be entitled, under the provisions of sections seventy-one to seventy-four, inclusive, to any right of

action for damages against his employer if such employee knew of the defect or negligence which caused the injury, and failed within a reasonable time to give, or cause to be given, information thereof to the employer, or to some person superior to himself in the service of the employer who was entrusted with general superintendence.

SECTION 78. An employer who shall have contributed to an insurance fund created and maintained for the mutual purpose of indemnifying an employee for personal injuries for which compensation may be recovered under the provisions of sections seventy-one to seventy-four, inclusive, or to any relief society formed under the provisions of sections seventeen, eighteen and nineteen of chapter one hundred and twenty-five, may prove, in mitigation of the damages recoverable by an employee under the provisions of said sections, such proportion of the pecuniary benefit which has been received by such employee from any such fund or society on account of such contribution of said employer as the contribution of such employer to such fund or society bears to the whole contribution thereto.

SECTION 79. The provisions of the eight preceding sections shall not apply to injuries caused to domestic servants or farm laborers by fellow employees.

APPENDIX D

BRITISH WORKMEN'S COMPENSATION ACT OF 1906.

AN ACT to consolidate and amend the law with respect to compensation to workmen for injuries suffered in the course of their employment [21st December, 1906].

Be it enacted by . . . Parliament assembled, and by the authority of the same, as follows:

1. — (1) If in any employment personal injury by accident arising out of and in the course of the employment is caused to a workman, his employer shall, subject as hereinafter mentioned, be liable to pay compensation in accordance with the first schedule to this act.

(2) Provided that —

(*a*) The employer shall not be liable under this act in respect of any injury which does not disable the workman for a period of at least one week from earning full wages at the work at which he was employed;

(*b*) When the injury was caused by the personal negligence or willful act of the employer or of some person for whose act or default the employer is responsible, nothing in this act shall affect any civil liability of the employer, but in that case the workman may, at his option, either claim compensation under this act or take proceedings independently of this act; but the employer shall not be liable to pay compensation for injury to a workman by accident arising out of and in the course of the employment both independently of and also under this act, and shall not be liable to any proceedings independently of this act, except in case of such personal negligence or willful act as aforesaid;

(c) If it is proved that the injury to a workman is attributable to the serious and willful misconduct of that workman, any compensation claimed in respect of that injury shall, unless the injury results in death or serious and permanent disablement, be disallowed.

(3) If any question arises in any proceedings under this act as to the liability to pay compensation under this act (including any question as to whether the person injured is a workman to whom this act applies), or as to the amount or duration of compensation under this act, the question, if not settled by agreement, shall, subject to the provisions of the first schedule to this act, be settled by arbitration, in accordance with the second schedule to this act.

(4) If, within the time hereinafter in this act limited for taking proceedings, an action is brought to recover damages independently of this act for injury caused by any accident, and it is determined in such action that the injury is one for which the employer is not liable in such action, but that he would have been liable to pay compensation under the provisions of this act, the action shall be dismissed; but the court in which the action is tried shall, if the plaintiff so choose, proceed to assess such compensation, but may deduct from such compensation all or part of the costs which, in its judgment, have been caused by the plaintiff bringing the action instead of proceeding under this act. In any proceeding under this subsection, when the court assesses the compensation it shall give a certificate of the compensation it has awarded and the directions it has given as to the deduction for costs, and such certificate shall have the force and effect of an award under this act.

(5) Nothing in this act shall affect any proceeding

for a fine under the enactments relating to mines, factories, or workshops, or the application of any such fine.

2. — (1) Proceedings for the recovery under this act of compensation for an injury shall not be maintainable unless notice of the accident has been given as soon as practicable after the happening thereof and before the workman has voluntarily left the employment in which he was injured, and unless the claim for compensation with respect to such accident has been made within six months from the occurrence of the accident causing the injury, or, in case of death, within six months from the time of death:

Provided always that —

(*a*) The want of or any defect or inaccuracy in such notice shall not be a bar to the maintenance of such proceedings if it is found in the proceedings for settling the claim that the employer is not, or would not, if a notice or an amended notice were then given and the hearing postponed, be prejudiced in his defense by the want, defect, or inaccuracy, or that such want, defect, or inaccuracy was occasioned by mistake, absence from the United Kingdom, or other reasonable cause; and

(*b*) The failure to make a claim within the period above specified shall not be a bar to the maintenance of such proceedings if it is found that the failure was occasioned by mistake, absence from the United Kingdom, or other reasonable cause.

(2) Notice in respect of an injury under this act shall give the name and address of the person injured, and shall state in ordinary language the cause of the injury and the date at which the accident happened, and shall be served on the employer, or, if

there is more than one employer, upon one of such employers.

(3) The notice may be served by delivering the same at, or sending it by post in a registered letter addressed to, the residence or place of business of the person on whom it is to be served.

(4) Where the employer is a body of persons, corporate or unincorporate, the notice may also be served by delivering the same at, or by sending it by post in a registered letter addressed to, the employer at the office, or, if there be more than one office, any one of the offices of such body.

3. — (1) If the registrar of friendly societies, after taking steps to ascertain the views of the employer and workmen, certifies that any scheme of compensation, benefit, or insurance for the workmen of an employer in any employment, whether or not such scheme includes other employers and their workmen, provides scales of compensation not less favorable to the workmen and their dependents than the corresponding scales contained in this act, and that, where the scheme provides for contributions by the workmen, the scheme confers benefits at least equivalent to those contributions, in addition to the benefits to which the workmen would have been entitled under this act, and that a majority (to be ascertained by ballot) of the workmen to whom the scheme is applicable are in favor of such scheme, the employer may, whilst the certificate is in force, contract with any of his workmen that the provisions of the scheme shall be substituted for the provisions of this act, and thereupon the employer shall be liable only in accordance with the scheme, but, save as aforesaid, this act shall apply notwithstanding any contract to the contrary made after the commencement of this act.

(2) The registrar may give a certificate to expire at the end of a limited period of not less than five years, and may from time to time renew with or without modifications such a certificate to expire at the end of the period for which it is renewed.

(3) No scheme shall be so certified which contains an obligation upon the workmen to join the scheme as a condition of their hiring, or which does not contain provisions enabling a workman to withdraw from the scheme.

(4) If complaint is made to the registrar of friendly societies by or on behalf of the workmen of any employer that the benefits conferred by any scheme no longer conform to the conditions stated in subsection (1) of this section, or that the provisions of such scheme are being violated, or that the scheme is not being fairly administered, or that satisfactory reasons exist for revoking the certificate, the registrar shall examine into the complaint, and, if satisfied that good cause exists for such complaint, shall, unless the cause of complaint is removed, revoke the certificate.

(5) When a certificate is revoked or expires, any moneys or securities held for the purpose of the scheme shall, after due provision has been made to discharge the liabilities already accrued, be distributed as may be arranged between the employer and workmen, or as may be determined by the registrar of friendly societies in the event of a difference of opinion.

(6) Whenever a scheme has been certified as aforesaid, it shall be the duty of the employer to answer all such inquiries and to furnish all such accounts in regard to the scheme as may be made or required by the registrar of friendly societies.

(7) The chief registrar of friendly societies shall

include in his annual report the particulars of the proceedings of the registrar under this act.

(8) The chief registrar of friendly societies may make regulations for the purpose of carrying this section into effect.

4. — (1) Where any person (in this section referred to as the principal), in the course of or for the purposes of his trade or business, contracts with any other person (in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work undertaken by the principal, the principal shall be liable to pay to any workman employed in the execution of the work any compensation under this act which he would have been liable to pay if that workman had been immediately employed by him; and where compensation is claimed from or proceedings are taken against the principal, then, in the application of this act, references to the principal shall be substituted for references to the employer, except that the amount of compensation shall be calculated with reference to the earnings of the workman under the employer by whom he is immediately employed:

Provided that, where the contract relates to threshing, plowing, or other agricultural work, and the contractor provides and uses machinery driven by mechanical power for the purpose of such work, he and he alone shall be liable under this act to pay compensation to any workman employed by him on such work.

(2) Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by any person who would have been liable to pay compensation to the workman independently of this section, and all questions as to the right to and amount

of any such indemnity shall in default of agreement be settled by arbitration under this act.

(3) Nothing in this section shall be construed as preventing a workman recovering compensation under this act from the contractor instead of the principal.

(4) This section shall not apply in any case where the accident occurred elsewhere than on, or in, or about premises on which the principal has undertaken to execute the work or which are otherwise under his control or management.

5. — (1) Where any employer has entered into a contract with any insurers in respect of any liability under this act to any workman, then, in the event of the employer becoming bankrupt, or making a composition or arrangement with his creditors, or if the employer is a company in the event of the company having commenced to be wound up, the rights of the employer against the insurers as respects that liability shall, notwithstanding anything in the enactments relating to bankruptcy and the winding up of companies, be transferred to and vest in the workman, and upon any such transfer the insurers shall have the same rights and remedies and be subject to the same liabilities as if they were the employer, so however that the insurers shall not be under any greater liability to the workman than they would have been under to the employer.

(2) If the liability of the insurers to the workman is less than the liability of the employer to the workman, the workman may prove for the balance in the bankruptcy or liquidation.

(3) There shall be included among the debts which, under section one of the Preferential Payments in Bankruptcy Act, 1888, and section four of the Preferential Payments in Bankruptcy (Ireland) Act, 1889, are

in the distribution of the property of a bankrupt and in the distribution of the assets of a company being wound up to be paid in priority to all other debts, the amount, not exceeding in any individual case one hundred pounds, due in respect of any compensation the liability wherefor accrued before the date of the receiving order or the date of the commencement of the winding up, and those acts and the Preferential Payments in Bankruptcy Amendment Act, 1897, shall have effect accordingly. Where the compensation is a weekly payment, the amount due in respect thereof shall, for the purposes of this provision, be taken to be the amount of the lump sum for which the weekly payment could, if redeemable, be redeemed if the employer made an application for that purpose under the first schedule to this act.

(4) In the case of the winding up of a company within the meaning of the Stannaries Act, 1887, such an amount as aforesaid, if the compensation is payable to a miner or the dependents of a miner, shall have the like priority as is conferred on wages of miners by section nine of that act, and that section shall have effect accordingly.

(5) The provisions of this section with respect to preferences and priorities shall not apply where the bankrupt or the company being wound up has entered into such a contract with insurers as aforesaid.

(6) This section shall not apply where a company is wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company.

6. Where the injury for which compensation is payable under this act was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof —

(1) The workman may take proceedings both against that person to recover damages and against any person liable to pay compensation under this act for such compensation, but shall not be entitled to recover both damages and compensation; and

(2) If the workman has recovered compensation under this act, the person by whom the compensation was paid, and any person who has been called on to pay an indemnity under the section of this act relating to subcontracting, shall be entitled to be indemnified by the person so liable to pay damages as aforesaid, and all questions as to the right to and amount of any such indemnity shall, in default of agreement, be settled by action, or, by consent of the parties, by arbitration under this act.

7. — (1) This act shall apply to masters, seamen, and apprentices to the sea service and apprentices in the sea-fishing service, provided that such persons are workmen within the meaning of this act, and are members of the crew of any ship registered in the United Kingdom, or of any other British ship or vessel of which the owner, or (if there is more than one owner) the managing owner, or manager resides or has his principal place of business in the United Kingdom, subject to the following modifications:

(*a*) The notice of accident and the claim for compensation may, except where the person injured is the master, be served on the master of the ship as if he were the employer, but where the accident happened and the incapacity commenced on board the ship it shall not be necessary to give any notice of the accident;

(*b*) In the case of the death of the master, seaman, or apprentice, the claim for compensation shall be made

within six months after news of the death has been received by the claimant;

(*c*) Where an injured master, seaman, or apprentice is discharged or left behind in a British possession or in a foreign country, depositions respecting the circumstances and nature of the injury may be taken by any judge or magistrate in the British possession, and by any British consular officer in the foreign country, and if so taken shall be transmitted by the person by whom they are taken to the Board of Trade, and such deposition or certified copies thereof shall in any proceedings for enforcing the claim be admissible in evidence as provided by sections six hundred and ninety-one and six hundred and ninety-five of the Merchant Shipping Act, 1894, and those sections shall apply accordingly;

(*d*) In the case of the death of a master, seaman, or apprentice, leaving no dependents, no compensation shall be payable, if the owner of the ship is, under the Merchant Shipping Act, 1894, liable to pay the expenses of burial;

(*e*) The weekly payment shall not be payable in respect of the period during which the owner of the ship is, under the Merchant Shipping Act, 1894, as amended by any subsequent enactment, or otherwise, liable to defray the expenses of maintenance of the injured master, seaman, or apprentice;

(*f*) Any sum payable by way of compensation by the owner of a ship under this act shall be paid in full notwithstanding anything in section five hundred and three of the Merchant Shipping Act, 1894 (which relates to the limitation of a shipowner's liability in certain cases of loss of life, injury, or damage), but the limitation on the owner's liability imposed by that section shall apply to the amount recoverable by way of indemnity under

the section of this act relating to remedies both against employer and stranger as if the indemnity were damages for loss of life or personal injury;

(*g*) Subsections (2) and (3) of section one hundred and seventy-four of the Merchant Shipping Act, 1894 (which relates to the recovery of wages of seamen lost with their ship), shall apply as respects proceedings for the recovery of compensation by dependents of masters, seamen, and apprentices lost with their ship as they apply with respect to proceedings for the recovery of wages due to seamen and apprentices; and proceedings for the recovery of compensation shall in such a case be maintainable if the claim is made within eighteen months of the date at which the ship is deemed to have been lost with all hands.

(2) This act shall not apply to such members of the crew of a fishing vessel as are remunerated by shares in the profits or the gross earnings of the working of such vessel.

(3) This section shall extend to pilots to whom Part X of the Merchant Shipping Act, 1894, applies, as if a pilot when employed on any such ship as aforesaid were a seaman and a member of the crew.

8. — (1) Where —

(*i*) The certifying surgeon appointed under the Factory and Workshop Act, 1901, for the district in which a workman is employed certifies that the workman is suffering from a disease mentioned in the third schedule to this act and is thereby disabled from earning full wages at the work at which he was employed; or

(*ii*) A workman is, in pursuance of any special rules or regulations made under the Factory and Workshop Act, 1901, suspended from his usual employment on account of having contracted any such disease; or

(*iii*) The death of a workman is caused by any such disease;

and the disease is due to the nature of any employment in which the workman was employed at any time within the twelve months previous to the date of the disablement or suspension, whether under one or more employers, he or his dependents shall be entitled to compensation under this act as if the disease or such suspension as aforesaid were a personal injury by accident arising out of and in the course of that employment, subject to the following modifications:

(*a*) The disablement or suspension shall be treated as the happening of the accident;

(*b*) If it is proved that the workman has at the time of entering the employment willfully and falsely represented himself in writing as not having previously suffered from the disease, compensation shall not be payable;

(*c*) The compensation shall be recoverable from the employer who last employed the workman during the said twelve months in the employment to the nature of which the disease was due:

Provided that —

(*i*) The workman or his dependents if so required shall furnish that employer with such information as to the names and addresses of all other employers who employed him in the employment during the said twelve months as he or they may possess, and, if such information is not furnished, or is not sufficient to enable that employer to take proceedings under the next following proviso, that employer upon proving that the disease was not contracted whilst the workman was in his employment shall not be liable to pay compensation; and

(*ii*) If that employer alleges that the disease was in fact contracted whilst the workman was in the employment of some other employer, and not whilst in his employment, he may join such other employer as a party to the arbitration, and if the allegation is proved that the other employer shall be the employer from whom the compensation is to be recoverable; and

(*iii*) If the disease is of such a nature as to be contracted by a gradual process, any other employers who during the said twelve months employed the workman in the employment to the nature of which the disease was due shall be liable to make to the employer from whom compensation is recoverable such contributions as, in default of agreement, may be determined in the arbitration under this act for settling the amount of the compensation;

(*d*) The amount of the compensation shall be calculated with reference to the earnings of the workman under the employer from whom the compensation is recoverable;

(*e*) The employer to whom notice of the death, disablement, or suspension is to be given shall be the employer who last employed the workman during the said twelve months in the employment to the nature of which the disease was due, and the notice may be given notwithstanding that the workman has voluntarily left his employment;

(*f*) If an employer or a workman is aggrieved by the action of a certifying or other surgeon in giving or refusing to give a certificate of disablement or in suspending or refusing to suspend a workman for the purposes of this section, the matter shall in accordance with regulations made by the secretary of state be referred to a medical referee, whose decision shall be final.

(2) If the workman at or immediately before the date of the disablement or suspension was employed in any process mentioned in the second column of the third schedule to this act, and the disease contracted is the disease in the first column of that schedule set opposite the description of the process, the disease, except where the certifying surgeon certifies that in his opinion the disease was not due to the nature of the employment, shall be deemed to have been due to the nature of that employment, unless the employer proves the contrary.

(3) The secretary of state may make rules regulating the duties and fees of certifying and other surgeons (including dentists) under this section.

(4) For the purposes of this section the date of disablement shall be such date as the certifying surgeon certifies as the date on which the disablement commenced, or, if he is unable to certify such a date, the date on which the certificate is given:

Provided that —

(*a*) Where the medical referee allows an appeal against a refusal by a certifying surgeon to give a certificate of disablement, the date of disablement shall be such date as the medical referee may determine;

(*b*) Where a workman dies without having obtained a certificate of disablement, or is at the time of death not in receipt of a weekly payment on account of disablement, it shall be the date of death.

(5) In such cases, and subject to such conditions as the secretary of state may direct, a medical practitioner appointed by the secretary of state for the purpose shall have the powers and duties of a certifying surgeon under this section, and this section shall be construed accordingly.

(6) The secretary of state may make orders for

extending the provisions of this section to other diseases and other processes, and to injuries due to the nature of any employment specified in the order not being injuries by accident, either without modification or subject to such modifications as may be contained in the order.

(7) Where, after inquiry held on the application of any employers or workmen engaged in any industry to which this section applies, it appears that a mutual trade insurance company or society for insuring against risks under this section has been established for the industry, and that a majority of the employers engaged in that industry are insured against such risks in the company or society and that the company or society consents, the secretary of state may, by provisional order, require all employers in that industry to insure in the company or society upon such terms and under such conditions and subject to such exceptions as may be set forth in the order. Where such a company or society has been established, but is confined to employers in any particular locality or of any particular class, the secretary of state may for the purposes of this provision treat the industry, as carried on by employers in that locality or of that class, as a separate industry.

(8) A provisional order made under this section shall be of no force whatever unless and until it is confirmed by Parliament, and if, while the bill confirming any such order is pending in either House of Parliament, a petition is presented against the order, the bill may be referred to a select committee, and the petitioner shall be allowed to appear and oppose as in the case of private bills, and any act confirming any provisional order under this section may be repealed, altered, or amended by a provisional order made and confirmed in like manner.

(9) Any expenses incurred by the secretary of state in respect of any such order, provisional order, or confirming bill shall be defrayed out of moneys provided by Parliament.

(10) Nothing in this section shall affect the rights of a workman to recover compensation in respect of a disease to which this section does not apply, if the disease is a personal injury by accident within the meaning of this act.

9. — (1) This act shall not apply to persons in the naval or military service of the Crown, but otherwise shall apply to workmen employed by or under the Crown to whom this act would apply if the employer were a private person:

Provided that in the case of a person employed in the private service of the Crown, the head of that department of the royal household in which he was employed at the time of the accident shall be deemed to be his employer.

(2) The treasury may, by warrant laid before Parliament, modify for the purposes of this act their warrant made under section one of the Superannuation Act, 1887, and notwithstanding anything in that act, or any such warrant, may frame schemes with a view to their being certified by the registrar of friendly societies under this act.

10. — (1) The secretary of state may appoint such legally qualified medical practitioners to be medical referees for the purposes of this act as he may, with the sanction of the treasury, determine, and the remuneration of, and other expenses incurred by, medical referees under this act shall, subject to regulations made by the treasury, be paid out of moneys provided by Parliament.

Where a medical referee has been employed as a medical practitioner in connection with any case by or on behalf of an employer or workman or by any insurers interested, he shall not act as medical referee in that case.

(2) The remuneration of an arbitrator appointed by a judge of county courts under the second schedule to this act shall be paid out of moneys provided by Parliament in accordance with regulations made by the treasury.

11. — (1) If it is alleged that the owners of any ship are liable as such owners to pay compensation under this act, and at any time that ship is found in any port or river of England or Ireland, or within three miles of the coast thereof, a judge of any court of record in England or Ireland may, upon its being shown to him by any person applying in accordance with the rules of the court that the owners are probably liable as such to pay such compensation, and that none of the owners reside in the United Kingdom, issue an order directed to any officer of customs or other officer named by the judge requiring him to detain the ship until such time as the owners, agent, master, or consignee thereof have paid such compensation, or have given security, to be approved by the judge, to abide the event of any proceedings that may be instituted to recover such compensation and to pay such compensation and costs as may be awarded thereon; and any officer of customs or other officer to whom the order is directed shall detain the ship accordingly.

(2) In any legal proceeding to recover such compensation, the person giving security shall be made defendant, and the production of the order of the judge, made in relation to the security, shall be con-

clusive evidence of the liability of the defendant to the proceeding.

(3) Section six hundred and ninety-two of the Merchant Shipping Act, 1894, shall apply to the detention of a ship under this act as it applies to the detention of a ship under that act, and, if the owner of a ship is a corporation, it shall for the purposes of this section be deemed to reside in the United Kingdom if it has an office in the United Kingdom at which service of writs can be effected.

12. — (1) Every employer in any industry to which the secretary of state may direct that this section shall apply shall, on or before such day in every year as the secretary of state may direct, send to the secretary of state a correct return specifying the number of injuries in respect of which compensation has been paid by him under this act during the previous year, and the amount of such compensation, together with such other particulars as to the compensation as the secretary of state may direct, and in default of complying with this section shall be liable on conviction under the Summary Jurisdiction Acts to a fine not exceeding five pounds [$24.33].

(2) Any regulations made by the secretary of state containing such directions as aforesaid shall be laid before both Houses of Parliament as soon as may be after they are made.

13. In this act, unless the context otherwise requires, —

"Employer" includes any body of persons corporate or unincorporate and the legal personal representative of a deceased employer, and, where the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has en-

tered into a contract of service or apprenticeship, the latter shall, for the purposes of this act, be deemed to continue to be the employer of the workman whilst he is working for that other person;

"Workman" does not include any person employed otherwise than by way of manual labor whose remuneration exceeds two hundred and fifty pounds [$1216.63] a year, or a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business, or a member of a police force, or an outworker, or a member of the employer's family dwelling in his house, but, save as aforesaid, means any person who has entered into or works under a contract of service or apprenticeship with an employer, whether by way of manual labor, clerical work, or otherwise, and whether the contract is expressed or implied, is oral or in writing;

Any reference to a workman who has been injured shall, where the workman is dead, include a reference to his legal personal representative or to his dependents or other person to whom or for whose benefit compensation is payable;

"Dependents" means such of the members of the workman's family as were wholly or in part dependent upon the earnings of the workman at the time of his death, or would but for the incapacity due to the accident have been so dependent, and where the workman, being the parent or grandparent of an illegitimate child, leaves such a child so dependent upon his earnings, or, being an illegitimate child, leaves a parent or grandparent so dependent upon his earnings, shall include such an illegitimate child and parent or grandparent respectively;

"Member of a family" means wife or husband,

father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half-brother, half-sister;

"Ship," "vessel," "seaman," and "port" have the same meanings as in the Merchant Shipping Act, 1894;

"Manager," in relation to a ship, means the ship's husband or other person to whom the management of the ship is entrusted by or on behalf of the owner;

"Police force" means a police force to which the Police Act, 1890, or the Police (Scotland) Act, 1890, applies, the City of London Police Force, the Royal Irish Constabulary, and the Dublin Metropolitan Police Force;

"Outworker" means a person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished, or repaired, or adapted for sale, in his own home or on other premises not under the control or management of the person who gave out the materials or articles;

The exercise and performance of the powers and duties of a local or other public authority shall, for the purposes of this act, be treated as the trade or business of the authority;

"County court," "judge of the county court," "registrar of the county court," "plaintiff," and "rules of court," as respects Scotland, mean respectively sheriff court, sheriff, sheriff clerk, pursuer, and act of sederunt.

14. In Scotland, where a workman raises an action against his employer independently of this act in respect of any injury caused by accident arising out of and in the course of the employment, the action, if raised in the sheriff court and concluding for damages under the Employers' Liability Act, 1880, or alternatively at

common law or under the Employers' Liability Act, 1880, shall, notwithstanding anything contained in that act, not be removed under that act or otherwise to the court of session, nor shall it be appealed to that court otherwise than by appeal on a question of law; and for the purposes of such appeal the provisions of the second schedule to this act in regard to an appeal from the decision of the sheriff on any question of law determined by him as arbitrator under this act shall apply.

15. — (1) Any contract (other than a contract substituting the provisions of a scheme certified under the Workmen's Compensation Act, 1897, for the provisions of that act) existing at the commencement of this act, whereby a workman relinquishes any right to compensation from the employer for personal injury arising out of and in the course of his employment, shall not, for the purposes of this act, be deemed to continue after the time at which the workman's contract of service would determine if notice of the determination thereof were given at the commencement of this act.

(2) Every scheme under the Workmen's Compensation Act, 1897, in force at the commencement of this act shall, if recertified by the registrar of friendly societies, have effect as if it were a scheme under this act.

(3) The registrar shall recertify any such scheme if it is proved to his satisfaction that the scheme conforms, or has been so modified as to conform, with the provisions of this act as to schemes.

(4) If any such scheme has not been so recertified before the expiration of six months from the commencement of this act, the certificate thereof shall be revoked.

16. — (1) This act shall come into operation on the first day of July, nineteen hundred and seven, but, except so far as it relates to references to medical referees, and proceedings consequential thereon, shall not apply in any case where the accident happened before the commencement of this act.

(2) The Workmen's Compensation Acts, 1897 and 1900, are hereby repealed, but shall continue to apply to cases where the accident happened before the commencement of this act, except to the extent to which this act applies to those cases.

17. This act may be cited as the Workmen's Compensation Act, 1906.

FIRST SCHEDULE

Scale and Conditions of Compensation

(1) The amount of compensation under this act shall be —

(*a*) Where death results from the injury —

(*i*) If the workman leaves any dependents wholly dependent upon his earnings, a sum equal to his earnings in the employment of the same employer during the three years next preceding the injury, or the sum of one hundred and fifty pounds [$729.98], whichever of those sums is the larger, but not exceeding in any case three hundred pounds [$1459.95], provided that the amount of any weekly payments made under this act, and any lump sum paid in redemption thereof, shall be deducted from such sum, and, if the period of the workman's employment by the said employer has been less than the said three years, then the amount of his earnings during the said three years shall be deemed to be one hundred and fifty-six times his average weekly

earnings during the period of his actual employment under the said employer;

(*ii*) If the workman does not leave any such dependents, but leaves any dependents in part dependent upon his earnings, such sum, not exceeding in any case the amount payable under the foregoing provisions, as may be agreed upon, or, in default of agreement, may be determined, on arbitration under this act, to be reasonable and proportionate to the injury to the said dependents; and

(*iii*) If he leaves no dependents, the reasonable expenses of his medical attendance and burial, not exceeding ten pounds [$48.67];

(*b*) Where total or partial incapacity for work results from the injury, a weekly payment during the incapacity not exceeding fifty per cent of his average weekly earnings during the previous twelve months, if he has been so long employed, but if not, then for any less period during which he has been in the employment of the same employer, such weekly payment not to exceed one pound [$4.87];

Provided that —

(*a*) If the incapacity lasts less than two weeks no compensation shall be payable in respect of the first week; and

(*b*) As respects the weekly payments during total incapacity of a workman who is under twenty-one years of age at the date of the injury, and whose average weekly earnings are less than twenty shillings [$4.87], one hundred per cent shall be substituted for fifty per cent of his average weekly earnings, but the weekly payment shall in no case exceed ten shillings [$2.43].

(2) For the purposes of the provisions of this sched-

ule relating to "earnings" and "average weekly earnings" of a workman, the following rules shall be observed:

(*a*) Average weekly earnings shall be computed in such manner as is best calculated to give the rate per week at which the workman was being remunerated. Provided that where by reason of the shortness of the time during which the workman has been in the employment of his employer, or the casual nature of the employment, or the terms of the employment, it is impracticable at the date of the accident to compute the rate of remuneration, regard may be had to the average weekly amount which, during the twelve months previous to the accident, was being earned by a person in the same grade employed at the same work by the same employer, or, if there is no person so employed, by a person in the same grade employed in the same class of employment and in the same district;

(*b*) Where the workman had entered into concurrent contracts of service with two or more employers under which he worked at one time for one such employer and at another time for another such employer, his average weekly earnings shall be computed as if his earnings under all such contracts were earnings in the employment of the employer for whom he was working at the time of the accident;

(*c*) Employment by the same employer shall be taken to mean employment by the same employer in the grade in which the workman was employed at the time of the accident, uninterrupted by absence from work due to illness or any other unavoidable cause;

(*d*) Where the employer has been accustomed to pay to the workman a sum to cover any special expenses entailed on him by the nature of his employment, the

sum so paid shall not be reckoned as part of the earnings.

(3) In fixing the amount of the weekly payment, regard shall be had to any payment, allowance, or benefit which the workman may receive from the employer during the period of his incapacity, and in the case of partial incapacity the weekly payment shall in no case exceed the difference between the amount of the average weekly earnings of the workman before the accident and the average weekly amount which he is earning or is able to earn in some suitable employment or business after the accident, but shall bear such relation to the amount of that difference as under the circumstances of the case may appear proper.

(4) Where a workman has given notice of an accident, he shall, if so required by the employer, submit himself for examination by a duly qualified medical practitioner provided and paid by the employer, and, if he refuses to submit himself to such examination, or in any way obstructs the same, his right to compensation, and to take or prosecute any proceeding under this act in relation to compensation, shall be suspended until such examination has taken place.

(5) The payment in the case of death shall, unless otherwise ordered as hereinafter provided, be paid into the county court, and any sum so paid into court shall, subject to rules of court and the provisions of this schedule, be invested, applied, or otherwise dealt with by the court in such manner as the court in its discretion thinks fit for the benefit of the persons entitled thereto under this act, and the receipt of the registrar of the court shall be a sufficient discharge in respect of the amount paid in:

Provided that, if so agreed, the payment in case of

death shall, if the workman leaves no dependents, be made to his legal personal representative, or, if he has no such representative, to the person to whom the expenses of medical attendance and burial are due.

(6) Rules of court may provide for the transfer of money paid into court under this act from one court to another, whether or not the court from which it is to be transferred is in the same part of the United Kingdom as the court to which it is to be transferred.

(7) Where a weekly payment is possible under this act to a person under any legal disability, a county court may, on application being made in accordance with rules of court, order that the weekly payment be paid during the disability into court, and the provisions of this schedule with respect to sums required by this schedule to be paid into court shall apply to sums paid into court in pursuance of any such order.

(8) Any question as to who is a dependent shall, in default of agreement, be settled by arbitration under this act, or, if not so settled before payment into court under this schedule, shall be settled by the county court, and the amount payable to each dependent shall be settled by arbitration under this act, or, if not so settled before payment into court under this schedule, by the county court. Where there are both total and partial dependents nothing in this schedule shall be construed as preventing the compensation being allotted partly to the total and partly to the partial dependents.

(9) Where, on application being made in accordance with rules of court, it appears to a county court that, on account of neglect of children on the part of a widow, or on account of the variation of the circumstances of the various dependents, or for any other sufficient cause, an order of the court or an award as to the appor-

tionment amongst the several dependents of any sum paid as compensation, or as to the manner in which any sum payable to any such dependent is to be invested, applied, or otherwise dealt with, ought to be varied, the court may make such order for the variation of the former order or the award, as in the circumstances of the case the court may think just.

(10) Any sum which under this schedule is ordered to be invested may be invested in whole or in part in the Post Office Savings Bank by the registrar of the county court in his name as registrar.

(11) Any sum to be so invested may be invested in the purchase of an annuity from the national debt commissioners through the Post Office Savings Bank, or be accepted by the postmaster-general as a deposit in the name of the registrar as such, and the provisions of any statute or regulations respecting the limits of deposits in savings banks, and the declaration to be made by a depositor, shall not apply to such sums.

(12) No part of any money invested in the name of the registrar of any county court in the Post Office Savings Bank under this act shall be paid out, except upon authority addressed to the postmaster-general by the treasury or, subject to regulations of the treasury, by the judge or registrar of the county court.

(13) Any person deriving any benefit from any moneys invested in a post office savings bank under the provisions of this act may, nevertheless, open an account in a post office savings bank or in any other savings bank in his own name without being liable to any penalties imposed by any statute or regulations in respect of the opening of accounts in two savings banks, or of two accounts in the same savings bank.

(14) Any workman receiving weekly payments under

this act shall, if so required by the employer, from time to time submit himself for examination by a duly qualified medical practitioner provided and paid by the employer. If the workman refuses to submit himself to such examination, or in any way obstructs the same, his right to such weekly payments shall be suspended until such examination has taken place.

(15) A workman shall not be required to submit himself for examination by a medical practitioner under paragraph (4) or paragraph (14) of this schedule otherwise than in accordance with regulations made by the secretary of state, or at more frequent intervals than may be prescribed by those regulations.

Where a workman has so submitted himself for examination by a medical practitioner, or has been examined by a medical practitioner selected by himself, and the employer or the workman, as the case may be, has within six days after such examination furnished the other with a copy of the report of that practitioner as to the workman's condition, then, in the event of no agreement being come to between the employer and the workman as to the workman's condition or fitness for employment, the registrar of a county court, on application being made to the court by both parties, may, on payment by the applicants of such fee not exceeding one pound [$4.87] as may be prescribed, refer the matter to a medical referee.

The medical referee to whom the matter is so referred shall, in accordance with regulations made by the secretary of state, give a certificate as to the condition of the workman and his fitness for employment, specifying, where necessary, the kind of employment for which he is fit, and that certificate shall be conclusive evidence as to the matters so certified.

Where no agreement can be come to between the employer and the workman as to whether or to what extent the incapacity of the workman is due to the accident, the provisions of this paragraph shall, subject to any regulations made by the secretary of state, apply as if the question were a question as to the condition of the workman.

If a workman, on being required so to do, refuses to submit himself for examination by a medical referee to whom the matter has been so referred as aforesaid, or in any way obstructs the same, his right to compensation and to take or prosecute any proceeding under this act in relation to compensation, or, in the case of a workman in receipt of a weekly payment, his right to that weekly payment, shall be suspended until such examination has taken place.

Rules of court may be made for prescribing the manner in which documents are to be furnished or served and applications made under this paragraph and the forms to be used for those purposes and, subject to the consent of the treasury, as to the fee to be paid under this paragraph.

(16) Any weekly payment may be reviewed at the request either of the employer or of the workman, and on such review may be ended, diminished, or increased, subject to the maximum above provided, and the amount of payment shall, in default of agreement, be settled by arbitration under this act:

Provided that where the workman was at the date of the accident under twenty-one years of age and the review takes place more than twelve months after the accident, the amount of the weekly payment may be increased to any amount not exceeding fifty per cent of the weekly sum which the workman would probably

have been earning at the date of the review if he had remained uninjured, but not in any case exceeding one pound [$4.87].

(17) Where any weekly payment has been continued for not less than six months, the liability therefor may, on application by or on behalf of the employer, be redeemed by the payment of a lump sum of such an amount as, where the incapacity is permanent, would, if invested in the purchase of an immediate life annuity from the national debt commissioners through the Post Office Savings Bank, purchase an annuity for the workman equal to seventy-five per cent of the annual value of the weekly payment, and as in any other case may be settled by arbitration under this act, and such lump sum may be ordered by the committee or arbitrator or judge of the county court to be invested or otherwise applied for the benefit of the person entitled thereto: Provided that nothing in this paragraph shall be construed as preventing agreements being made for the redemption of a weekly payment by a lump sum.

(18) If a workman receiving a weekly payment, ceases to reside in the United Kingdom, he shall thereupon cease to be entitled to receive any weekly payment unless the medical referee certifies that the incapacity resulting from the injury is likely to be of a permanent nature. If the medical referee so certifies, the workman shall be entitled to receive quarterly the amount of the weekly payments accruing due during the preceding quarter so long as he proves, in such manner and at such intervals as may be prescribed by rules of court, his identity and the continuance of the incapacity in respect of which the weekly payment is payable.

(19) A weekly payment, or a sum paid by way of redemption thereof, shall not be capable of being

assigned, charged, or attached, and shall not pass to any other person by operation of law, nor shall any claim be set off against the same.

(20) Where under this schedule a right to compensation is suspended no compensation shall be payable in respect of the period of suspension.

(21) Where a scheme certified under this act provides for payment of compensation by a friendly society, the provisions of the proviso to the first subsection of section eight, section sixteen, and section forty-one of the Friendly Societies Act, 1896, shall not apply to such society in respect of such scheme.

(22) In the application of this act to Ireland the provisions of the County Officers and Courts (Ireland) Act, 1877, with respect to money deposited in the Post Office Savings Bank under that act shall apply to money invested in the Post Office Savings Bank under this act.

SECOND SCHEDULE

Arbitration, etc.

(1) For the purpose of settling any matter which under this act is to be settled by arbitration, if any committee, representative of any employer and his workmen, exists with power to settle matters under this act in the case of the employer and workmen, the matter shall, unless either party objects by notice in writing sent to the other party before the committee meet to consider the matter, be settled by the arbitration of such committee, or be referred by them in their discretion to arbitration as hereinafter provided.

(2) If either party so objects, or there is no such committee, or the committee so refers the matter or fails to settle the matter within six months from the

date of the claim, the matter shall be settled by a single arbitrator agreed on by the parties, or in the absence of agreement by the judge of the county court, according to the procedure prescribed by rules of court.

(3) In England the matter, instead of being settled by the judge of the county court, may, if the lord chancellor so authorizes, be settled according to the like procedure, by a single arbitrator appointed by that judge, and the arbitrator so appointed shall, for the purposes of this act, have all the powers of that judge.

(4) The Arbitration Act, 1889, shall not apply to any arbitration under this act; but a committee or an arbitrator may, if they or he think fit, submit any question of law for the decision of the judge of the county court, and the decision of the judge on any question of law, either on such submission, or in any case where he himself settles the matter under this act, or where he gives any decision or makes any order under this act, shall be final, unless within the time and in accordance with the conditions prescribed by rules of the Supreme Court either party appeals to the court of appeal; and the judge of the county court, or the arbitrator appointed by him, shall, for the purpose of proceedings under this act, have the same powers of procuring the attendance of witnesses and the production of documents as if the proceedings were an action in the county court.

(5) A judge of county courts may, if he thinks fit, summon a medical referee to sit with him as an assessor.

(6) Rules of court may make provision for the appearance in any arbitration under this act of any party by some other person.

(7) The costs of and incidental to the arbitration and proceedings connected therewith shall be in the discre-

tion of the committee, arbitrator, or judge of the county court, subject as respects such judge and an arbitrator appointed by him to rules of court. The costs, whether before a committee or an arbitrator or in the county court, shall not exceed the limit prescribed by rules of court, and shall be taxed in manner prescribed by those rules and such taxation may be reviewed by the judge of the county court.

(8) In the case of the death, or refusal or inability to act, of an arbitrator, the judge of the county court may, on the application of any party, appoint a new arbitrator.

(9) Where the amount of compensation under this act has been ascertained, or any weekly payment varied, or any other matter decided under this act, either by a committee or by an arbitrator or by agreement, a memorandum thereof shall be sent, in manner prescribed by rules of court, by the committee or arbitrator, or by any party interested, to the registrar of the county court who shall, subject to such rules, on being satisfied as to its genuineness, record such memorandum in a special register without fee, and thereupon the memorandum shall for all purposes be enforceable as a county court judgment.

Provided that —

(*a*) No such memorandum shall be recorded before seven days after the dispatch by the registrar of notice to the parties interested; and

(*b*) Where a workman seeks to record a memorandum of agreement between his employer and himself for the payment of compensation under this act and the employer, in accordance with rules of court, proves that the workman has in fact returned to work and is earning the same wages as he did before the accident, and

objects to the recording of such memorandum, the memorandum shall only be recorded, if at all, on such terms as the judge of the county court, under the circumstances, may think just; and

(*c*) The judge of the county court may at any time rectify the register; and

(*d*) Where it appears to the registrar of the county court, on any information which he considers sufficient, that an agreement as to the redemption of a weekly payment by a lump sum, or an agreement as to the amount of compensation payable to a person under any legal disability, or to dependents, ought not to be registered by reason of the inadequacy of the sum or amount, or by reason of the agreement having been obtained by fraud or undue influence, or other improper means, he may refuse to record the memorandum of the agreement sent to him for registration; and refer the matter to the judge, who shall, in accordance with rules of court, make such order (including an order as to any sum already paid under the agreement) as under the circumstances he may think just; and

(*e*) The judge may, within six months after a memorandum of an agreement as to the redemption of a weekly payment by a lump sum, or of an agreement as to the amount of compensation payable to a person under any legal disability, or to dependents, has been recorded in the register, order that the record be removed from the register on proof to his satisfaction that the agreement was obtained by fraud or undue influence or other improper means, and may make such order (including an order as to any sum already paid under the agreement) as under the circumstances he may think just.

(10) An agreement as to the redemption of a weekly

payment by a lump sum if not registered in accordance with this act shall not, nor shall the payment of the sum payable under the agreement, exempt the person by whom the weekly payment is payable from liability to continue to make that weekly payment, and an agreement as to the amount of compensation to be paid to a person under a legal disability or to dependents, if not so registered, shall not, nor shall the payment of the sum payable under the agreement, exempt the person by whom the compensation is payable from liability to pay compensation, unless, in either case, he proves that the failure to register was not due to any neglect or default on his part.

(11) Where any matter under this act is to be done in a county court, or by, to, or before the judge or registrar of a county court, then, unless the contrary intention appear, the same shall, subject to rules of court, be done in, or by, to, or before the judge or registrar of the county court of the district in which all the parties concerned reside, or if they reside in different districts the district prescribed by rules of court, without prejudice to any transfer in manner provided by rules of court.

(12) The duty of a judge of county courts under this act, or in England of an arbitrator appointed by him, shall, subject to rules of court, be part of the duties of the county court, and the officers of the court shall act accordingly, and rules of court may be made both for any purpose for which this act authorizes rules of court to be made, and also generally for carrying into effect this act so far as it affects the county court, or an arbitrator appointed by the judge of the county court, and proceedings in the county court or before any such arbitrator, and such rules may, in England, be made by the five judges of county courts appointed for the making

of rules under section one hundred and sixty-four of the County Courts Act, 1888, and when allowed by the lord chancellor, as provided by that section, shall have full effect without any further consent.

(13) No court fee, except such as may be prescribed under paragraph (15) of the first schedule to this act, shall be payable by any party in respect of any proceedings by or against a workman under this act in the court prior to the award.

(14) Any sum awarded as compensation shall, unless paid into court under this act, be paid on the receipt of the person to whom it is payable under any agreement or award, and the solicitor or agent of a person claiming compensation under this act shall not be entitled to recover from him any costs in respect of any proceedings in an arbitration under this act, or to claim a lien in respect of such costs on, or deduct such costs from, the sum awarded or agreed as compensation, except such sum as may be awarded by the committee, the arbitrator, or the judge of the county court, on an application made either by the person claiming compensation, or by his solicitor or agent, to determine the amount of costs to be paid to the solicitor or agent, such sum to be awarded subject to taxation and to the scale of costs prescribed by rules of court.

(15) Any committee, arbitrator, or judge may, subject to regulations made by the secretary of state and the treasury, submit to a medical referee for report any matter which seems material to any question arising in the arbitration.

(16) The secretary of state may, by order, either unconditionally or subject to such conditions or modifications as he may think fit, confer on any committee representative of an employer and his workmen, as

respects any matter in which the committee act as arbitrators, or which is settled by agreement submitted to and approved by the committee, all or any of the powers conferred by this act exclusively on county courts or judges of county courts, and may by the order provide how and to whom the compensation money is to be paid in cases where, but for the order, the money would be required to be paid into court, and the order may exclude from the operation of provisos (*d*) and (*e*) of paragraph (9) of this schedule agreements submitted to and approved by the committee, and may contain such incidental, consequential, or supplemental provisions as may appear to the secretary of state to be necessary or proper for the purposes of the order.

(17) In the application of this schedule to Scotland —

(*a*) "County court judgment" as used in paragraph (9) of this schedule means a recorded decree arbitral:

(*b*) Any application to the sheriff as arbitrator shall be heard, tried, and determined summarily in the manner provided by section fifty-two of the Sheriff Courts (Scotland) Act, 1876, save only that parties may be represented by any person authorized in writing to appear for them and subject to the declaration that it shall be competent to either party within the time and in accordance with the conditions prescribed by act of sederunt to require the sheriff to state a case on any question of law determined by him, and his decision thereon in such case may be submitted to either division of the court of session, who may hear and determine the same and remit to the sheriff with instruction as to the judgment to be pronounced, and an appeal shall lie from either of such divisions to the House of Lords.

(*c*) Paragraphs (3), (4), and (8) shall not apply.

(18) In the application of this schedule to Ireland the expression "judge of the county court" shall include the recorder of any city or town, and an appeal shall lie from the court of appeal to the House of Lords.

THIRD SCHEDULE

Description of disease	*Description of process*
Anthrax	Handling of wool, hair, bristles, hides, and skins.
Lead poisoning or its sequelæ . . .	Any process involving the use of lead or its preparations or compounds.
Mercury poisoning or its sequelæ .	Any process involving the use of mercury or its preparations or compounds.
Phosphorus poisoning or its sequelæ	Any process involving the use of phosphorus or its preparations or compounds.
Arsenic poisoning or its sequelæ . .	Any process involving the use of arsenic or its preparations or compounds.
Ankylostomiasis	Mining.

Where regulations or special rules made under any act of Parliament for the protection of persons employed in any industry against the risk of contracting lead poisoning require some or all of the persons employed in certain processes specified in the regulations or special rules to be periodically examined by a certifying or other surgeon, then, in the application of this schedule to that industry, the expression "process" shall, unless the secretary of state otherwise directs, include only the processes so specified.

APPENDIX E

TABLE A

The Workmen's Insurance of the German Empire

Total population 58,000,000
Wage-workers [1] 14,500,000

Summary [2] — *1902*

Insurance against	Sickness	Accident	Invalidity
Persons insured	10,320,000 [3]	19,083,000 [4]	13,381,000 [5]
Persons compensated [6]	3,983,900	834,600	1,061,000
Receipts [7] (marks) [8]	200,350,600	141,394,100	210,677,100 [9]
Including contributions of employers	58,624,900	125,663,300	69,492,900
Including contributions of employed	130,784,000	—	69,492,900
Expenses [10]	194,060,000	124,796,900	132,361,800 [9]
Including costs of compensation [6]	183,174,100	108,133,100	120,414,100 [9]
Including costs of administration [11]	10,885,900	16,663,800	11,947,700
Accumulated funds [12]	186,645,200	199,194,300	1,007,477,500
Compensation per Case [13]	46.0	128.7	113.0 [9]
Charges per person insured [14]	18.8	7.1	13.2 [9]

The National [15] Insurance — based on mutuality and self-administration — is compulsory for all wage-earners [1] in Germany, irrespective of nationality, and, unlike mere Poor-Law Relief, confers on every insured a legal claim — proceedings free of expense — to certain assistance in case of sickness, accident, or invalidity (infirmity and old age).

[1] Wage-workers = professional workmen and laborers on wages; wage-earners = all persons working for wages or salary (up to 2000 marks per annum), as well workmen and laborers as industrial and agricultural officials, commercial assistants and small employers (masters and farmers). [2] The numbers are taken from the financial statement 1902 (01). [3] Persons employed for wages or salary (see note 1) in trade and commerce, partly in agriculture (forestry) and domestic service; see Table B. [4] Persons employed (see note 1) in industry and agriculture (forestry) — not in commerce, handicrafts, and petty trades — including about 4,800,000 small farmers (with areas under 10 hectares) and 1,500,000 persons insured in additional or double employments; see Table C. [5] Workers of all trades and servants, likewise (industrial and agricultural) officials and commercial assistants with regular year's earnings up to 2000 marks; see Table D. [6] Persons having received legal assistance in money or in kind (free medical or hospital treatment, medicines, etc.), provided by the workmen's insurance laws for disability caused by sickness, accident, invalidity, or old age; see tables B, C, D, *II.* [7] Excluding balance in hand at the commencement of the year and interest on investments. [8] 1 mark = 100 pfennigs has the money value of about 1 shilling or ¼ dollar, but the same purchasing power in Germany as about 2 shillings in Great Britain or ½ dollar in America. [9] Including state subsidies; see Table D, *I.* [10] Excluding the year's addition to the funds. [11] Including the current costs of the whole organization. [12] Provided by law in order to secure the payments named (note 6). [13] Average amount paid out for each case of sickness, accident, invalidity, or old age; see Tables B, C, D, *II.* [14] Average amount paid in per head of insured; see Tables B, C, D, *II.* [15] Established by imperial laws embracing the whole empire.

TABLE B

Sickness Insurance of the German Empire

I. Total Result — 1901

Organization of insurance	Number	Persons insured	Cases of sickness	Days of sickness	Receipts marks	Expenses marks	Funds marks
Compulsory sick-clubs.....	21,111	9,409,524	3,642,268	65,911,390	181,815,112	175,778,956	168,222,992
Voluntary sick-clubs..... ..	1,659	910,040	341,630	6,534,756	18,535,465	18,281,074	18,422,206
Total.....	22,770	10,319,564	3,983,898	72,446,146	200,350,577	194,060,030	186,645,198

II. Average Result 1885 — 1900

Marks (per annum) per person insured					Per case of sickness		Relief per 100 insured			Relief per 100 marks					
Contributions of		Expenses of		Funds	Sick-days	Expenses marks	Sick persons			Sick pay	Doctor	Medicine	Hospital	Burial	Child-bed
Employers	Employed	Relief	Management				Male	Female	Total						
4.70	10.99	13.97	0.88	16.90	16.8	37.92	38.1	31.8	36.8	45.49	20.72	16.76	11.95	3.64	1.44

III. Normal Payments

The contributions are paid ⅓ by employers and ⅔ by employed (up to 4 % of the daily wages); in voluntary sick-clubs the workmen pay the whole.

The Sick Relief includes:

(a) Free medical attendance and medicines,
(b) In case of disablement a sick-pay = 50 % of the daily wages, } or { free hospital treatment and half the sick-pay for the family during 26 weeks;

(c) Similar relief for women in childbed for 6 weeks;
(d) In case of death, funeral expenses = 20 times the daily wages.

The Sickness Insurance — established by Imperial Law of June 15, 1883 — comprises persons engaged in trade and commerce, working for wages or salary (up to 2000 marks per annum); it is managed by local sick-associations organized for the various branches of trade. The Insurance Organization will be extended to persons employed in agriculture, forestry, and domestic service, whose sick relief is now regulated partly by state or parish (township).

TABLE C

Accident Insurance of the German Empire

I. Total Result — 1902

Organization of insurance	Number	Works	Persons insured	Accidents compensated	Receipts marks	Expenses marks	Funds marks
Industrial trade associations.....	66	578,834	7,100,537	369,985	102,108,631	87,030,924	187,067,557
Agricultural associations.....	48	4,638,457	11,189,071	304,389	30,386,495	28,866,965	11,526,706
Officers for state works.....	481	—	793,150	36,956	(8,899,010)	8,899,010	—
Total.....	595	5,217,291	19,082,758	711,330	141,394,136	124,796,899	199,194,263

II. Average Result

Financial Year	Marks per person insured					Marks per case of accident	Compensation per 1000 insured				Compensation per 100 marks			
	Contributions of		Expenses of		Funds		Injured persons	Survivors			Allowances to		Charges for	
	Employers	Employed	Compensation	Management				Widows	Orphans	Parents	Injured	Survivors	Cure	Burial
In the year 1890	2.98	—	1.40	0.40	5.52	200.00	6.3	1.0	1.9	0.1	68.66	21.35	2.61	1.38
In the 50th year	6.86	—	6.40	0.40	13.72	200 00	21.7	8.3	5.0	0.3	67.44	30.20	8.04	0.32

III. Normal Payments

The Contributions are annually levied on employers proportionately to the extent of their business (i. e. the wages paid or the number of hands employed) and to the risk of accident in the various occupations.

The compensation includes:

(a) in case of bodily injuries, from the beginning of the 14th week after the occurence of the accident, i. e., in continuation of the sicknesss insurance:

1. Free medical attendance with medicines and remedies, } or { free hospital treatment during the whole cure
2. A pension during disablement up to 66⅔% of the yearly earnings, } { and a pension for the family as in case of death;

(b) in case of fatal injuries:

3. As funeral expenses the 15th part of the yearly earnings, but not less than 50 marks, and
4. A pension for survivors from the day of death { widow (widower) and children / parents or grandchildren } up to 60 % of the yearly earnings.

The Accident Insurance — established by Imperial Laws of 1884–1887 — comprises workpeople engaged in industry and agriculture, officials with yearly salaries up to 3000 marks, and small employers; it is based on mutuality of the employers united in trade associations. The insurance organization will be extended to persons employed in commerce, handicrafts, and petty trades.

TABLE D

Invalidity and Old Age Insurance of the German Empire

I. Total Result—1902

Organization of insurance	Number	Persons insured	Persons pensioned	Receipts marks	Expenses marks	State subsidies marks	Funds marks
Insurance institutions	31	12,777,000	798,000	194,764,071	87,700,135	35,963,651	923,119,786
Special organs	9	604,000	41,000	15,913,044	6,811,935	1,886,043	84,357,745
Total	40	13,381,000	839,000	210,677,115	94,512,070	37,849,694	1,007,477,531

II. Average Result

Financial year	Marks per person insured					Yearly pension marks		Pensioners per 100 insured			Pension per 100 marks	
	Contribution	State subsidy	Pension	Management	Funds	Invalidity	Old age	Invalidity	Old age	Total	Invalidity	Old age
In the 1st year	8.21	0.54	1.36	0.40	7.09	113.51	125.08	0.00	1.20	1.20	0.00	100.00
In the 50th year	18.00	6.00	27.34	0.40	125.33	225.60	135.00	11.40	1.20	12.60	94.07	5.93

III. Normal Payments

In the Wage Classes I - V with yearly earnings	I up to 350 marks	II up to 550 marks	III up to 850 marks	IV up to 1150 marks	V over 1150 marks
Weekly contribution payable half by employer and half by employed	0.14	0.20	0.24	0.30	0.36
Total contribution of the insured in { the waiting time (200 weeks)	14	20	24	30	36
{ 50 years (2500 weeks)	175	250	300	375	450
Yearly pension with state subsidy of 50 marks each:					
(a) For invalids (persons unfit for work) after { the waiting time (200 weeks)	116.40	126.00	134.40	142.20	150.00
{ 50 years (2500 weeks)	185.40	270.00	330.00	390.00	450.00
(b) For persons 70 years old, still able to work	110.40	140.40	170.40	200.40	230.40

The Invalidity and Old Age Insurance—established January 1, 1891, by Imperial Law of June 22, 1889—comprises the working people of all trades in territorial organization (differing from Accident and Sickness Insurance restricted to branches of trade) and promises, when in state of permanence (see Section II and p. 26), on every 100 insured, 1 old age and 11 invalidity pensioners, i. e., out of 50,000,000 population to about 1,500,000 persons, the benefit of 330,000,000 marks annuities.

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TABLE I. SICK INSURANCE

The Workmen's Insurance in Germany and abroad

TABLE II ACCIDENT INSURANCE

The Workmen's Insurance in Germany and Abroad

No.	Country	Kind of insurance	Its extent	Carriers	Contributions	Benefits secured	Settlement of disputes
1	Germany	Compulsory insurance (Imperial Law of 1884)	workmen and employees (with yearly salaries up to 2,000 marks) engaged in trade and agriculture	Professional associations based on mutuality and self administration. Besides: Special organs for public works	The whole outlay assessed on the employers, according to wages and risks	(a) Free medical treatment and pension (up to [illegible] of year's earnings) or free hospital with relief to family (up to [illegible] of year's earnings), from the [illegible] week after the accident; (b) Burial = 20 times daily wages and pension to survivors (up to [illegible]). All accidents are compensated unless intentional on work [illegible] part	Free Arbitration Court, Imperial Insurance Department with equal representation of employers and employed
		By special rules for	employers with salaries above 2,000 marks; small employers (building, trade, agriculture)				
		Voluntary insurance for	the employers and persons not under compulsion				
		Statistics (1906)	Population [illegible] million — Wage workers 14 million	[illegible] associations and [illegible] million workers / [illegible] million persons	[illegible] million marks, per insured [illegible] marks	[illegible] million marks paid to [illegible] injured, 40,967 widows, [illegible] children, 2,[illegible] parents (of killed men, etc.)	
2	Austria	Compulsory insurance for (Law of [illegible])	workmen and employees (up to [illegible] marks yearly earnings) engaged in trade (including agricultural machinery)	Territorial insurance institutions. Besides: Professional associations for state railways	Premiums: employers [illegible], employed [illegible], according to wages and risks	(a) Only accident pension up to 60 [illegible] from the 5th week; (b) burial up to 42 marks and pension to survivors (up to 50 [illegible]). All accidents are compensated as No. 1	Free Arbitration court only
		Voluntary insurance for	employers and persons not liable to insure (up to 2,000 marks yearly)				
		Statistics (190[illegible])	Population 2[illegible] million — Wage workers [illegible] million	[illegible] institutions and [illegible] workers / [illegible] persons	[illegible] million marks, per insured [illegible] marks	[illegible] million marks paid to 27,144 injured, 2,537 widows, 4,[illegible] children, 382 parents	
3	Hungary	No insurance	Reform proposed [illegible] (see The Workmen's Insurance Abroad [illegible])				
			Population 1[illegible] million — Wage workers [illegible] million				
4	Italy	Compulsory insurance for (Law of 17.[illegible])	workmen and employees (with salaries to 1,[illegible] marks) engaged in trade	State or private institutions at employers choice	Employers only	(a) For injured: sick pay up to [illegible] of daily wages from [illegible] day; (b) For invalids: lump sum up to [illegible] times the yearly earnings or annuity; (c) For survivors: [illegible]; (d) First medical assistance. All accidents [illegible] compensated as No. 1	Arbitration court (up to [illegible] marks), otherwise the ordinary court (reduced costs)
			Population 3[illegible] million — Wage workers [illegible]	[illegible]	Average per insured [illegible] marks		
5	France	Voluntary insurance for (Law of [illegible])	workmen and employees (up to [illegible] marks yearly) engaged in trade (including agricultural machinery)	[illegible]	as No. 1	(a) For injured: sick pay up to [illegible] daily wages from [illegible] day; (b) For invalids: pension up to [illegible] of yearly earnings; (c) For survivors: pension up to [illegible]; (d) Medical [illegible] expenses. In case of [illegible] compensation	Justice of the peace for [illegible], otherwise the ordinary court (summarily)
		Compulsory insurance for (Law of [illegible])	Seamen	State institution	Employers [illegible], Employed [illegible]	Invalids: pension [illegible] marks, sick pay for injured, survivors [illegible] marks	Commission
			Population [illegible] million — Wage workers [illegible] million				
6	Belgium	No insurance	Reform proposed [illegible] (see The Workmen's Insurance Abroad [illegible])				
		Compulsory insurance for (Law of [illegible])	Miners ([illegible] 120,000)	[illegible] with [illegible] participation	Employers [illegible]	According to the rules	
			Population [illegible] million — Wage workers [illegible] million				
7	England	Voluntary insurance for (Law of [illegible])	workmen and employees (up to [illegible] marks yearly) engaged in trade	as No. 1	as No. 1	(a) Only [illegible] up to [illegible] of the wages [illegible]; (b) For survivors [illegible] and funeral expenses up to [illegible] marks. No compensation in case of [illegible] and wilfulness on the part of the injured	Arbitration court or the ordinary court (reduced costs)
			Population [illegible] million — Wage workers [illegible] million				
8	Norway	Compulsory insurance for (Law of [illegible])	workmen and employees (up to 1,[illegible] marks yearly) engaged in trade	State institution	Employers premiums according to wages and risks	(a) For injured: free medical [illegible] up to [illegible] wages or free hospital with relief to family up to [illegible] after the accident; (b) Burial [illegible] and pension to survivors up to 50 [illegible]. No compensation in case of intentional injury [illegible]	Free Commission
			Population 2 million — Wage workers 0.[illegible] million				
9	Sweden	No insurance	Reform proposed [illegible] introduces compulsory insurance for all wage workers (see The Workmen's Insurance Abroad [illegible])				
10	Denmark	Voluntary insurance for (Law of [illegible])	workmen and employees (up to 2,[illegible] marks yearly) engaged in trade	as No. 1	as No. 1	(a) For injured: sick pay up to 60 [illegible] of daily wages from the 13th week; (b) For invalids: lump sum up to [illegible] times yearly earnings; (c) For survivors: lump sum up to [illegible] times yearly earnings and funeral expenses [illegible] marks. No compensation in case of intention / negligence of the injured	Workmen's Insurance Council
			Population 2.[illegible] million — Wage workers 0.[illegible] million				
11	Finland	Compulsory insurance for (Law of 5.12.95)	workmen engaged in trade (up to [illegible] marks yearly)	as No. 1	as No. 1	(a) For injured: sick pay up to [illegible] of daily wages or free hospital with relief to family 40 [illegible] from the 7th day; (b) For invalids: pension up to 60 [illegible] of yearly wages; (c) For survivors: pension up to [illegible] of yearly wages. No compensation in case of intention / negligence of the injured	Ordinary court
			Population 3 million — Wage workers 0.5 million				
12	Switzerland	Compulsory insurance (Law of 5.10.99, see I, 12)	as with sick insurance (see I, 12)	State institution	Premiums: employers 7[illegible], employed 2[illegible]; State subsidy [illegible] of the whole	(a) For injured: medical relief and sick pay or free hospital with relief to family from the 6th week (see I, 12); (b) For invalids: pension up to 60% of yearly earnings; (c) For survivors: pension (up to 50 [illegible]) and funeral expenses (up to [illegible] marks). No compensation in case of intention / negligence of the injured	Free (Federal Insurance Court)
		Voluntary insurance for	the employers				
			Population 3 million — Wage workers 0.7 million				

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TABLE III INVALID INSURANCE

The Workmen's Insurance in Germany and Abroad

No.	Country	Form of the provision made	Its extent	Its organisation	Contributions to be paid	Benefits secured	Settlement of disputes	Country	No.
1	Germany	Compulsory insurance for (Imperial Law of 22.6.89 / 13.7.99)	all wage workers and employees (with salaries to 2000 marks); small masters and home industrials (by order of Bundesrath)	Territorial Insurance Institutions (based on mutuality and self administration). Besides special organs for railways and mines.	Equal premiums by employers / employed and State subsidy (50 marks per annuity)	(a) Invalid pension for invalids (after 200 contributory weeks); (b) old age pension for septuagenarians (after 1200 contributory weeks); (c) Free cure with relief to family in order to prevent invalidity; (d) Reimbursement of contributions in case of death or marriage (before pension obtainable)	Free Arbitration Court. Imperial Insurance Department (with equal representation of employers and employed)	Germany	1.
		Voluntary insurance for	workmen, employees, small masters (not obliged to insure)						
		Statistics (1898)	Population [illegible] million — Wage workers [illegible] million	[illegible] institutions — 12[illegible] million persons insured	11[illegible] million marks (per persons insured 11 marks)	[illegible] million marks (per invalid pension 1[illegible] / old age pension 1[illegible] marks, per cure 200 marks)			
2	Austria	No insurance	Reform proposed since 1891 to introduce compulsory insurance as No. 1 (see "The Workmen's Insurance Abroad," vol. [illegible], p. 4 foll.)						
		Compulsory insurance only for	Miners (150,000)	Miners' relief funds	Equal charges by employers / employed	(a) Invalid pension at least 170 marks for men, [illegible] marks for women; (b) Widows' and orphans' pension up to [illegible] of the invalid pension	Arbitration Court	Austria	2.
			Population [illegible] million — Wage workers [illegible] million						
3	Hungary	No insurance	—	—	—		—	Hungary	3
4	Italy	Voluntary insurance for (Law of 17.7.98)	all wage workers	State institution	Premiums of the insured (at least [illegible] marks, at most 80 marks yearly) State subsidy (up to 10 marks per head)	(a) Invalid pension for invalids (after [illegible] contributory years); (b) Old age pension for sexagenarians (after 25 contributory years); (c) Reimbursement of contributions in case of death		Italy	4
			Population 31 million — Wage-workers [illegible] million						
5	France	Voluntary insurance for (Law of 18.6.50 / 20.7.86)	all citizens	State institution; 1896 { 200,000 old age pensions / Average 1[illegible] marks	Premiums of the insured (at least 0.80, at most 4.00 marks yearly); State subsidy (up to [illegible] of the pension)	(a) Old age pension from the 50th year (up to 1000 marks yearly); (b) Invalid pension for earlier infirmity; (c) Reimbursement of contributions in case of death	—	France	5
			Population 38 million — Wage workers [illegible] million						
			Reform proposed since 1891 to introduce a partly compulsory insurance (see "The Workmen's Insurance Abroad," vol. iv, p. 17 foll.)						
		Compulsory insurance { Law of 11.4.81 for / Law of [illegible] for	Seamen / Miners (up to 2000 marks yearly earnings)	State institution / Miners' pension funds	Control of the insured, state subsidy / Equal charges by employers, employed	Invalid pension from the 40th year (widows / orphans [illegible]) / Pension from the [illegible]th year	Commission		
6	Belgium	Voluntary insurance (Law of 8.5.50 / 16.[illegible])	as No. 5	as No. [illegible]	as No. [illegible]	(1897 [illegible] old age pensions, average 300 marks)		Belgium	6
			Reform proposed since 18[illegible] in order to introduce compulsory insurance (see "The Workmen's Insurance Abroad," vol. xii, p. 1[illegible] foll.)						
		Compulsory insurance for (Law of [illegible])	Miners (see II, 6)	Miners' relief clubs (see II, 6)	Employers, employed, state, and province	(a) Old-age pension (after 30–[illegible] years of service); (b) Relief for widows and orphans	Commission		
7	England	Voluntary insurance (Law of 1882 / [illegible])	as No. [illegible] (see also II, 7)		Premiums of the insured	Annuities up to 2000 marks (1864–1890 [illegible] pensions, average 60 marks)	—	England	7.
			Reform proposed since 188[illegible] to introduce compulsory insurance or old age pensions by the state (see "The Workmen's Insurance Abroad," vol. x, p. 2[illegible] foll.)						
8	Norway	No insurance.	Reform proposed since 1890 to introduce compulsory insurance (see "The Workmen's Insurance Abroad," vol. iii, p. 7 foll.)				—	Norway	8.
9	Sweden	No insurance	Reform proposed since 1891 to introduce compulsory insurance (see "The Workmen's Insurance," vol. ii, p. 7, foll.).				—	Sweden	9
10	Denmark	No insurance, but	Provision for needy people (over 60 years old) by the state (Law of 9.4.91)		State and parish (each one-half)	According to the need of the party	Local magistracy	Denmark	10.
11	Finland	Voluntary insurance for	all persons working for wages	Local pension funds	According to the rules (state supervision)		—	Finland	11.
12	Switzerland	No insurance, only	Pension funds for those engaged on railways and steamers (Law of 28.6.89)		as No. 11		—	Switzerland	12.

INDEX

The Riverside Press
CAMBRIDGE . MASSACHUSETTS
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